

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

LARRY E WARNER JR
Claimant

APPEAL NO. 07A-UI-07625-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JACOBSON TRANSPORTATION CO INC
Employer

**OC: 06/24/07 R: 02
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated August 7, 2007, reference 04, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on August 22, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. John Briley participated in the hearing on behalf of the employer with a witness, Keith Schug.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a regional truck driver from December 5, 2006, to June 20, 2007. The claimant was informed and understood that under the employer's work rules, he could be disciplined for safety violations. The claimant received training that instructed him to look back and sound his horn when backing up on his forklift.

On June 20, 2007, the claimant was operating a forklift on the dock. The forklift is supposed to have a beeper that sounds when the forklift is placed in reverse and a light that comes on when the forklift is operating. The beeper, however, was not working and the light was not positioned properly.

The claimant was waiting on the forklift for another driver to exit a trailer. He decided that he needed to back up a short distance to get in a better position to get in the trailer with his load. He glanced backward to see if there was anyone behind him. He did not see anyone so he backed a couple of feet. Another employee who was pushing a refrigerator on a dolly came across the dock while the claimant was backing up. The forklift ran into the refrigerator. The employee was not hit.

The employer discharged the claimant on June 20, 2007, for negligently colliding with the refrigerator.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful and substantial misconduct has been proven in this case. The claimant was negligent in not looking backward while he was backing his forklift, but the rules and the case law indicate that a single act of negligence is insufficient to demonstrate "repeated negligence of such a degree of recurrence" that it equals willful misconduct in culpability. Henry v. Iowa Department of Job Service, 391 N.W.2d 731 (Iowa App. 1986).

DECISION:

The unemployment insurance decision dated August 7, 2007, reference 04, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css