

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENNIS L COOPER

Claimant

MAIL CONTRACTORS OF AMERICA INC

Employer

APPEAL NO: 11A-UI-02801-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/16/11

Claimant: Respondent (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
871 IAC 24.32(9) – Disciplinary Suspension

STATEMENT OF THE CASE:

The employer appealed a department decision dated February 25, 2011, reference 02, that held he was separated from employment due to a short-term lay-off on January 13, 2011, and benefits are allowed. A telephone hearing was held on March 30, 2011. The claimant participated. Christina McBride, HR Generalist. Employer Exhibit 1 was received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment as a full-time mail truck delivery driver on August 31, 2009, and last worked for the employer on January 13, 2011. The employer notified claimant he was placed on a “safety hold” on January 13. A safety hold is an out-of-service suspension pending an investigation.

The employer received a communication from another company that claimant’s semi-trailer had struck a piece of its equipment at a truck-stop in Brooklyn, Iowa on January 13. The claimant did not report the incident to the employer, but he did provide personal information to the other driver who told him another driver saw him strike the equipment.

The other company sent photos that showed claimant’s trailer had some minor scratches and there was a slight dent on its equipment. During the investigation, claimant denied he struck the equipment to the employer. After several weeks, the employer located claimant’s trailer that showed some minor scratches.

The employer terminated claimant on February 11, 2011 for failing to report the accident and damage on January 13. The employer does not provide the accident reporting policy directly to the claimant. The claimant did not have an accident report kit in his truck.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

871 IAC 24.32(9) provides:

(9) Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

The administrative law judge concludes the employer has failed to establish claimant was suspended on January 14, and discharged for misconduct in connection with employment on February 11, 2011.

The employer did not directly provide the accident reporting policy to claimant, and it did not provide an accident kit that also explains the accident reporting policy. The accident was minor, and claimant did provide information to the other party upon request. Claimant did not report the incident because he did not believe he was the responsible party.

Misconduct is not established in this matter. By failing to communicate the accident reporting policy to the claimant, it failed to establish the required standard of behavior. The damage was so slight that could cause a reasonable person to believe there was no preventable accident.

DECISION:

The department decision dated February 25, 2011, reference 02, is affirmed. The claimant was not suspended and discharged for misconduct on February 11, 2011. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs