

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHEN J BERRY
Claimant

APPEAL NO. 09A-UI-08259-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORTH SOUTH TRUCKING INC
Employer

**Original Claim: 05/03/09
Claimant: Appellant (2)**

Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated June 9, 2009, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 24, 2009. The claimant participated. The employer participated by Brian Close, owner and treasurer. The record consists of the testimony of Brian Close and the testimony of Stephen Berry.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant was hired as a truck driver on October 13, 2004. The employer is a trucking company and moves scrap steel for various customers. The claimant was terminated on April 21, 2009. The employer terminated the claimant for what it deemed to be two safety violations within a four-month period.

The first incident occurred on December 16, 2008. The tractor that the claimant was driving had a history of dropping trailers. The problem was a defective fifth wheel. After the claimant had dropped six trailers with the tractor when leaving the yard, he was given another tractor to drive while the problem with the fifth wheel was fixed. This second tractor, however, developed a problem with its clutch, and so the claimant was given the other tractor, with the defective fifth wheel, to drive. As the claimant was going up an incline on a highway in Iowa, the trailer and tractor became unhooked and, as a result, the trailer sustained \$5,000.00 in damage. The claimant was not cited for any violation by any law enforcement official.

The second incident occurred on April 21, 2009. The claimant turned a corner at approximately 15 to 20 miles per hour and felt the load shift in his trailer. It was a windy day and the tractor fell

over on its side. There was \$8,104.00 damage done to the tractor. No citation was issued by any law enforcement official. The claimant was then terminated the same day.

REASONING AND CONCLUSIONS OF 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.

Misconduct that warrants termination does not necessarily constitute misconduct that disqualifies an individual from receiving unemployment insurance benefits. In this case, the employer terminated the claimant after two incidents that led to property damage. There was no personal injury claim in either instance and the claimant was not cited by law enforcement officials.

The two incidents that led to the claimant's termination are not examples of carelessness or negligence of such degree of recurrence that intentional and substantial disregard of the employer's interests has been shown. The claimant offered credible testimony that what occurred on both occasions was an accident, likely due to faulty equipment in the first instance on December 16, 2008. At best, the employer has shown ordinary negligence in two isolated instances. This ordinary negligence, even if it occurred, does not constitute misconduct within the meaning of the statute. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's decision dated June 9, 2009, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw