

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RONALD H JOHNSON
Claimant

APPEAL NO. 12A-UI-12047-SW

**ADMINISTRATIVE LAW JUDGE
DECISION**

GCC ALLIANCE CONCRETE INC
Employer

**OC: 01/15/12
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated September 28, 2012, reference 01, that concluded he was discharged for work-connected misconduct. A hearing was held on January 14, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Yaneth Zaragoza participated in the hearing on behalf of the employer with witnesses, Jim Iwema and Marlon Morey. Exhibits One and Two were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a truck driver from March 23, 2009, to September 6, 2012. He was informed and understood that under the employer's work rules, he could be discharged for accumulating ten points in 12-months for disciplinary violations. A preventable accident that endangered a driver or the public was a ten-point violation.

On August 31, 2012, the claimant was delivering a load of sand in a dump truck to a residence. The job required backing into a tight alley. One of the property owners, Mr. Bliss, was stationed near the back of the property where the load was to be dumped to guide him to the spot and help him avoid the house, air conditioning unit, and tree. The claimant had walked to the back where the load was to be dumped to check things out. As he was walking back to his dump truck, the other owner, Ms. Bliss, asked the claimant if he needed any help. The claimant told her that he thought he could handle it.

The claimant had noticed a minivan parked on the grass between the sidewalk and the street in the front of the house but did not think he would get near it when he backed into the alley. He turned sharply and when he saw the van in his side mirror on his blind side, he stopped and moved forward for a second try. He went back cleanly and dumped the load. When he drove forward, he saw someone looking at the back quarter panel. The claimant had misjudged his

turn on the first backing attempt and caught the van with the protruding lip on the back of the truck. He had not heard or felt anything when he first backed up.

The accident was immediately reported to the claimant's supervisor. After investigating the accident, the employer discharged the claimant on September 6, 2012, for the accident. The employer considered the accident a ten-point violation as a preventable accident that endangered a driver or the public.

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.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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, 11 (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).

No willful and substantial misconduct has been proven in this case. At most the record shows an isolated instance of negligent, which falls short of disqualifying misconduct under the law. The case law indicates 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).

While the employer may have been justified in discharging the claimant, no work-connected misconduct as defined by the unemployment insurance law has been established.

DECISION:

The unemployment insurance decision dated September 28, 2012, reference 01, 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

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