IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

BRYAN H GIBLIN
Claimant

FEDERAL EXPRESS CORP
Employer

APPEAL NO. 10A-UI-06194-DWT

ADMINISTRATIVE LAW JUDGE DECISION

Original Claim: 03/21/10
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed a representative's April 13, 2010 decision (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non-disqualifying reasons. A telephone hearing was held on May 19, 2010. The claimant participated in the hearing. Tom Kuiper represented the employer. Bradley Hunter, the operations manager, testified on the employer's behalf. During the hearing, Employer Exhibits One through Five were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on February 11, 2008. As a driver, the employer required the claimant to inspect the truck he drove before and after his route. If there was anything wrong or damaged on the truck, the employer required the driver to report the problem so proper maintenance could be done on the truck.

On December 15, 2009, the claimant received a warning after he had a second preventable accident on November 20, 2009. The first accident occurred on September 9, 2009. Both accidents happened when the claimant was backing up his truck and hit another vehicle or object. (Employer Exhibit One.)

On March 2, 2010, the claimant received his second written warning and a decision day after he had his third preventable accident on March 1, 2010. (Employer Exhibit Two.) The March 2 warning also informed the claimant that if he received a third disciplinary warning within 12 months, he could be discharged. On his decision day, the employer asked the claimant to think about whether he wanted to continue working as a driver or wanted to work in another position at a lower wage. The claimant wanted to continue working as a driver. He gave the

employer his plan of action as to what steps he would take so he would not have another preventable accident. (Employer Exhibit Three.)

Before he left on his March 15 route, the claimant noticed some scraped paint and a loose reflector or marker light on the side of the truck on the passenger's side toward the back of the truck. (Employer Exhibit Five.) The pre-inspection trip report does not have any space for driver's to note problems before going on a route. (Employer Exhibit Five.) When the claimant returned from his March 15 route, he noted the side rear reflector or marker light had fallen off. The claimant did not report the scraped paint on the truck. He assumed the scraped paint damage had been previously reported. (Employer Exhibit Five.)

On March 16, the mechanic noted the side rear reflector or marker appeared to have been torn off the truck. (Employer Exhibit Four.) This was a different light the mechanic had been asked to fix on the truck the day before. The employer investigated to see if anyone had reported any damage to the truck. When the employer talked to the claimant, he denied being involved in any accident on March 15. Since he reported the side rear reflector or marker light had fallen off on his post-trip inspection, he believed he adequately reported problems or issues with the truck. The employer concluded the clamant failed to properly report the damage that occurred on the truck during his route. Based on the mechanic's report, the employer concluded that during the claimant's March 15 route, the truck was damaged by something scraping the side of the truck and somehow the side reflector or marker had been torn off. The employer discharged the claimant because he had already received two disciplinary warnings for preventable accidents, knew or should have known his job was in jeopardy, but failed to report an accident that occurred during his March 15 route. The employer discharged the claimant on March 22, 2010.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. 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 willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. L*ee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew his job was in jeopardy. The evidence does not establish that the claimant was personally involved in an accident on March 15, 2010. When he returned from his route, he reported the damaged reflector or marker on the truck. While the claimant should have reported

the scraped paint, he did not. His failure to report the scraped paint amounts to poor judgment, but not work-connected misconduct.

DECISION:

The representative's April 13, 2010 decision (reference 01) is affirmed. The employer discharged the claimant for justifiable business reasons that do not constitute work-connected misconduct. As of March 21, 2010, the claimant is qualified to receive benefit, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw