

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RHONDA D CHAPMAN
Claimant

APPEAL NO. 09A-UI-07746-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

RMK ENTERPRISES LLC
Employer

**Original Claim: 10/19/08
Claimant: Respondent (1-R)**

Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated May 13, 2009, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 12, 2009. The claimant participated. The employer participated by Ray Mahaffey, president. The record consists of the testimony of Rhonda Chapman, the testimony of Ray Mahaffey, and the testimony of Karen De Jaeger.

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 employer in this case, RMK Enterprises, holds authority to haul freight in Iowa and Nebraska. RMK leases trucks from another company and then either hires employees to drive those trucks or leases those trucks to independent operators. There is a dispute in this case whether the claimant was an employee or an owner operator.

The claimant's relationship with RMK Enterprises came to an end on October 6, 2008. The claimant totaled the truck she was driving when she was involved in an accident. The claimant had to brake quickly to avoid collision with another truck that had spun sideways ahead of her. She was slightly injured in the accident and her medical bills were paid by the liability insurance carrier that insured the truck she was driving. She was not paid workers' compensation benefits. She did not do any more driving in connection with RMK Enterprises, as no other truck was made available to her.

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.

Assuming there is an employer/employee relationship between the claimant and RMK Enterprises, the record has not established misconduct that would disqualify the claimant from unemployment insurance benefits. The accident in which her truck was totaled does not appear to be the claimant's fault; and while there was total destruction of the truck, merely having one accident does not rise to the willful or wanton disregard of the employer's interests that constitutes misconduct under the unemployment insurance statute.

The administrative law judge has determined that there is an issue in this case on whether the claimant was an employee of RMK Enterprises or whether she was an independent contractor. Accordingly, the case is remanded back to the Unemployment Insurance Services Division for investigation and determination of that issue.

DECISION:

The representative's decision dated May 13, 2009, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible. The case is remanded back to the Unemployment Insurance Services Division for determination of whether the claimant is an employee of RMK Enterprises.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw