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

MICHAEL RIDDLE
Claimant

APPEAL NO: 14A-UI-10607-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CON-WAY TRUCKLOAD
Employer

OC: 08/17/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 30, 2014, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 30, 2014. The claimant participated in the hearing with Attorney Jim Kringlen. Annetta McCoy, Human Resources Information Systems Analyst, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time over-the-road driver for Con-Way Truckload from July 5, 2013 to August 15, 2014. He was discharged following a serious accident August 14, 2014.

The claimant was driving on a two lane highway in Wisconsin during the afternoon of August 14, 2014. He became very tired as he was driving and was looking for a place to pull over so he could rest. The highway did not have a shoulder he could use to pull the semi over so he continued in an effort to make it to an area he found on the GPS where he could safely stop the truck. Before he found a place he could do so, he fell asleep at the wheel, his truck crossed the center line, and he struck another semi. The claimant was not injured but the other truck was a total loss. The employer has paid over $43,000.00 in damages to date with more likely forthcoming.

The claimant was cited by local law enforcement for inattentive driving. The employer considers the severity of an accident, the preventability of an accident, and the frequency of accidents incurred by the driver in making a determination of disciplinary action. In this case, while the claimant had no previous accidents, the employer found the accident to be preventable and severe, and made the decision to terminate the claimant's employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. 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 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).

While the claimant did fall asleep and cause a serious accident, there is no evidence of intentional misconduct. He found himself in an untenable position where he knew he was drowsy and afraid he was going to fall asleep while driving a semi but with no safe place to pull over and rest. It is possible the claimant has sleep apnea and that contributed to his drowsiness

but during his last required DOT physical his sleep apnea score fell two and one-half points short, on a 15-point scale, of requiring treatment.

This was the claimant's only accident, and while severe, it cannot be classified as anything beyond ordinary negligence. Mere negligence does not equal misconduct. Consequently, the administrative law judge concludes the claimant's actions do not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The September 30, 2014, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

_____
Julie Elder
Administrative Law Judge

_____
Decision Dated and Mailed

je/css