

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES WYLIE
Claimant

APPEAL NO. 11A-UI-03086-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALLIED WASTE NORTH AMERICA INC
Employer

**OC: 01/16/11
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated March 3, 2011, reference 02, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 4, 2011. The claimant participated. The employer failed to respond to the hearing notice and did not participate. The record consists of the testimony of James Wylie and Claimant's Exhibits A and B.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

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

The employer provides garbage and recycling services. The claimant worked for the employer for almost eighteen years. The claimant was a driver. His last day of work was January 17, 2011. He was terminated on January 17, 2011.

The incident that led to the claimant's termination occurred on January 17, 2011. The weather was inclement. There had been freezing rain and then snow and the roads were icy and slippery. The claimant was asked to do a route with which he was not familiar. The claimant slowed down to make a turn and his truck began to slide on the ice. He could not control the slide and the truck went into the ditch. A garbage truck is top heavy and the truck rolled over. Two eyewitnesses to the accident, Dr. Randy Burger and Tammy Deppe, wrote letters describing the claimant's actions and the conditions of the day. (Exhibits A and B)

The claimant had never had an accident during his tenure with the employer.

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 leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Simple negligence in an isolated situation is not misconduct. The employer has the burden of proof to show misconduct.

There is no evidence whatsoever of misconduct in this record. The claimant was involved in a one-vehicle accident, which occurred when the garbage truck he was driving slid on some ice and went into the ditch. The claimant provided eyewitness statements that indicate that he was not driving too fast for conditions. Ms. Deppe's statement said that it was the claimant's driving skill that prevented other cars from being involved in the accident. No evidence was provided from the employer on why the claimant's actions are disqualifying misconduct. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The representative's decision dated March 3, 2011, reference 02, is affirmed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw