

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**BRADFORD J TODD  
12711 HWY 63  
OTTUMWA IA 52501**

**O'REILLY AUTOMOTIVE, INC.  
D/B/A O'REILLY AUTO PARTS  
233 S PATTERSON  
PO BOX 1156  
SPRINGFIELD MO 65802-1156**

**Appeal Number: 04A-UI-03012-RT  
OC: 02/15/04 R: 03  
Claimant: Respondent (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, O'Reilly Automotive, Inc., doing business as, O'Reilly Auto Parts, filed a timely appeal from an unemployment insurance decision dated March 11, 2004, reference 01, allowing unemployment insurance benefits to the claimant, Bradford J. Todd. After due notice was issued, a telephone hearing was held on April 7, 2004, with the claimant participating. Debra Peterson, Manager, participated in the hearing for the employer. Employer's Exhibit One was admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibit One, the administrative law judge finds: The claimant was employed by the employer as a full-time driver from November 19, 1998 until he was discharged on February 6, 2004. The claimant was discharged for reaching 20 points on the employer's driving policy, which requires that upon receipt of 20 points the driver is discharged. This is set out in the employer's policy at Employer's Exhibit One. The claimant was involved in two accidents each generating 10 points which reached 20 points and he was discharged. The accident that triggered his discharge occurred on February 2, 2004 when he rear-ended another vehicle. Another vehicle was ahead of the claimant at a yield sign. That vehicle began to go into the intersection and the claimant then began checking for traffic and started to move. The vehicle in front of the claimant stopped and the claimant ran into the rear end of the vehicle. There was no reason for that vehicle to stop, as there was no oncoming traffic. The claimant was given a ticket for some kind of speed restriction although he really was not speeding and he pled guilty to the ticket. There was \$3,800.00 in damages to the two vehicles. Approximately two years earlier, the claimant was involved in another accident on February 29, 2002 when he was backing out of a driveway and hit a van that was driving by. The claimant did not see the van and got a ticket for improper backing to which he pled guilty. There was over \$1,500.00 damages to both vehicles as a result of this accident. The claimant thus accumulated the 20 points. There was no evidence that the claimant ever received any specific written or oral warnings for his driving. The claimant was aware of the employer's 20-point policy. The claimant did not lose his driver's license as a result of these accidents nor was he uninsurable. The claimant did get warnings to be careful when there was bad weather but these accidents were not during bad weather.

Pursuant to his claim for unemployment insurance benefits filed effective February 15, 2004, the claimant has received unemployment insurance benefits in the amount of \$1,337.00 as follows: \$191.00 per week for seven weeks from benefit week ending February 21, 2004 to benefit week ending April 3, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was not.
2. Whether the claimant is overpaid unemployment insurance benefits. He is not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has failed to meet its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. At the outset, the administrative law judge concludes that there is not a preponderance of the evidence that either of the accidents that gave rise to the claimant's discharge were caused by deliberate acts or omissions on the part of the claimant constituting a material breach of his duties and obligations arising out of his worker's contract of employment nor do they evince willful or wanton disregard of the employer's interests and are not disqualifying misconduct as a result. The claimant testified that he was at fault for both accidents but that they were not intentional and that they were merely accidents.

The more difficult question here is whether the claimant's two accidents are carelessness or negligence in such a degree of recurrence as to establish disqualifying misconduct. Here, the administrative law judge concludes that they do not. The administrative law judge notes that the claimant has worked for the employer for over five years driving for the employer and has had only two accidents. Since the claimant had accumulated only 20 points and the two accidents generated 10 points each, apparently the claimant had generated no other points during the period of his employment for the employer. The accidents were almost two years apart. There is no evidence that the claimant ever received any specific warnings or disciplines for his driving or his accidents especially following the accident on February 29, 2002. The administrative law judge does conclude that the two accidents were as a result of the claimant's negligence, but the administrative law judge is constrained to conclude here for the above reasons that these two accidents were not carelessness or negligence in such a degree of recurrence as to establish disqualifying misconduct but were rather isolated instances of ordinary negligence and are not disqualifying misconduct.

Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant was discharged, but not for disqualifying misconduct, and, as a consequence, he is not disqualified to receive unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment insurance benefits, and misconduct, to support a disqualification from unemployment insurance benefits, must be substantial in nature. Fairfield Toyota, Inc. v. Bruegge, 449 N.W.2d 395, 398 (Iowa App. 1989). The administrative law judge concludes that there is insufficient evidence here of substantial misconduct on the part of the claimant to warrant his disqualification to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant, provided she is otherwise eligible.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$1,337.00 since separating from the employer herein on or about February 6, 2004 and filing for such benefits effective February 15, 2004. The administrative law judge further concludes that the claimant is entitled to these benefits and is not overpaid such benefits.

#### DECISION:

The representative's decision dated March 11, 2004, reference 01, is affirmed. The claimant, Bradford J. Todd, is entitled to receive unemployment insurance benefits provided he is otherwise eligible. As a result of this decision, the claimant has not been overpaid any unemployment insurance benefits arising out of his separation from the employer herein.

kjf/b