IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

RICKY R HACKETT
Claimant

AMERICAN CENTRAL TRANSPORT INC
Employer

APPEAL NO. 08A-UI-05482-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 05/04/08 R: 03
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

American Central Transport, Inc. (employer) appealed a representative's June 2, 2008 decision (reference 01) that concluded Ricky R. Hackett (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 25, 2008. The claimant participated in the hearing. Jack Curry appeared on the employer's behalf. 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on August 9, 2007. He worked full time as an over-the-road truck driver in the employer's motor carrier business. His last day of work was April 10, 2008. The employer discharged him on that date. The reason asserted for the discharge was having too many points under the employer's safety system.

The employer's policy provides for termination at six points. The claimant had started his employment with several points due to his lack of driving experience and due to a pre-employment accident; he also had three points for a backing accident while on ice in December 2007. However, by doing additional training and going without points for several months, as of March 1 the claimant was back down to three points.

On April 8 the claimant was driving on an interstate highway in Oklahoma City; while the speed limit was 55, highway traffic, including the claimant, was moving at approximately 30 to 35 miles per hour due to a tornado warning in the area accompanied by heavy rain. The claimant was traveling in the far right hand lane. A car coming from an entrance ramp passed the claimant on his right and appeared to be preparing to pull in front of the claimant. The claimant looked to his left and rear, where a passenger bus was occupying the lane. When he looked back in front of

him, the car coming on from the merge lane had traveled further on the shoulder to cut in front of the car in front of the claimant. That car came to a near full stop when the merging car cut in front of it. The claimant was then unable to stop in time from hitting the stopped car; the impact further caused the truck to veer left and caught the back right corner of the passenger bus. The claimant did receive a traffic citation for failing to keep a proper lookout.

The employer assessed five points for this accident, bringing the claimant to eight points, resulting in his discharge.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is having the additional accident pushing him over the allowable point level. The mere fact that an employee might have various incidents of unsatisfactory job performance does not establish the necessary element of intent; misconduct connotes volition. A failure in job performance is not misconduct unless it is intentional. Huntoon, supra; Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The employer has not demonstrated that under the circumstances in which it occurred the final accident was beyond the level of simple negligence; there has not been repetition of similar incidents of such a degree to indicate a wanton recklessness or wrongful intent. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's June 2, 2008 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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