IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

GREGORY A TEAGER Claimant	**APPEAL NO. 10A-UI-03988-S2T**
	ADMINISTRATIVE LAW JUDGE DECISION
M H LOGISTICS CORPORATION **M H EQUIPMENT** Employer	
	OC: 02/14/10 **Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

M H Logistics Corporation (employer) appealed a representative's March 12, 2010 decision (reference 01) that concluded Gregory Teager (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 28, 2010. The claimant participated personally and through Steve Jones, Labor Representative. The employer participated by Rick Stearns, Branch Manager, and Cheryl Baine, Employee Services Manager. The claimant offered and Exhibits A through N were received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 8, 1991, as a full-time shop service technician. The claimant signed for receipt of the employer's work rules. The rules state that an employee will be terminated if he has four written violations within a twelve-month period.

The employer issued the claimant warnings for attendance on July 29, March 19, and 25, 2009. All the warnings were properly reported and due to illness. On April 24, 2009, the claimant was approved for Family Medical Leave (FMLA) for complications after a work-related injury. On February 3, 2010, the employer issued the claimant a verbal warning for failing to properly perform a brake job. The claimant expressed concern about the job. The claimant's supervisor told the claimant to release the vehicle and see what happened. On February 4, 2010, the employer issued the claimant a written warning for ordering a system replacement rather than an individual part replacement. The claimant was unaware he could order the individual part.

The claimant drove an Omega forklift for about five minutes in January 2010. On February 17, 2010, the employer told the claimant to use the Omega forklift to load other forklifts on a truck.

The claimant was unaware that the Omega's wheels stuck out so far. He inadvertently hit a van. The employer terminated the claimant on February 17, 2010.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. Henry v. Iowa Department of Job Service, 391 N.W.2d 731 (Iowa App. 1986). The employer provided one act of carelessness which resulted in the damage to the van. The single act of carelessness does not comprise misconduct. The employer terminated the claimant. Misconduct has not been proven. Benefits are allowed.

DECISION:

The representative's March 12, 2010 decision (reference 01) is affirmed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

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