

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DUSTIN E SCHMITZ
Claimant

APPEAL NO. 08A-UI-00112-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIKE BROOKS INC
Employer

OC: 12/02/07 R: 12
Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated December 21, 2007, reference 01, that concluded he had discharged for work-connected misconduct. A telephone hearing was held on January 17, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Mark Anderson. Kevin Andrew participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time as a truck driver for the employer from April 5, 2004, to November 29, 2007. On March 22, 2006, the claimant received a warning after being cited on March 16, 2006, for following too closely by the state of Indiana. That charge was later dismissed. On June 15, 2007, the claimant was warned and placed on six-months probation after being cited for speeding (72 mph in a 55 mph zone) on May 7, 2007, in the state of Illinois. That charge was later reduced to a non-moving violation.

On November 26, 2007, the claimant was pulled over by the Illinois State Department of Transportation (DOT) because a light had burned out. In the inspection report, the DOT employee listed the defective light and a warning regarding the claimant's exceeding the speed limit (63 mph in a 55 mph zone). The claimant did not receive a speeding citation. The claimant turned in the inspection report to the employer.

After receiving the inspection report, Kevin Andrew, the safety director determined that due to the warning he had received for speeding and the violations on March 22, 2006, and May 7, 2007, he was discharged. The claimant was informed of the discharge on November 29, 2007. When the claimant was discharged, he did not have any moving violations during the past ten years and had received commendations for safe driving.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. 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 employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated December 21, 2007, reference 01, is reversed.
The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css