

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GREGORY S RIGGS

Claimant

APPEAL NO. 13A-UI-09440-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KIRKWOOD COMMUNITY COLLEGE-

AREA 1

Employer

OC: 07/21/13

Claimant: Respondent (1-R)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated August 14, 2013, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on September 20, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Mike Wilkerson. Sheri Hlavacek participated in the hearing on behalf of the employer with a witness, Freddy Jones.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a commercial truck driving instructor from September 2, 2011, to July 22, 2013.

The employer discharged the claimant on July 22 because students he was instructing were involved in accidents on March 7, 2012; June 5, 2013, and July 22, 2013. The employer also considered a warning issued on June 5, 2013, because a student complained that he had made a comment with a sexual connotation about handling the clutch.

In the accident on March 7, the student was clipped a vehicle in a parking lot. The claimant's view was obstructed by the student leaning forward and blocking his view. In the accident on June 5, the claimant had properly instructed the student on how to make the turn but the student hit the gas too hard and the trailer ended up hitting the stop sign at the corner. In the accident on July 22, the claimant noticed the student getting too close to a car. He properly instructed the student to stop but the student did not react fast enough and clipped the car.

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.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

No willful and substantial misconduct has been proven in this case. The claimant did not act in a negligent fashion, he tried to get the students to avoid the accidents.

The employer raised the issue of whether the claimant was able to and available for work. That issue was not listed on the hearing notice and is remanded to the Agency.

DECISION:

The unemployment insurance decision dated August 14, 2013, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The issue of whether the claimant is and was able to and available for work is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs