

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CARL L BURCHARD**  
Claimant

**APPEAL NO: 09A-UI-10557-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RUAN TRANSPORT CORP**  
Employer

**OC: 06/14/09  
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge  
871 IAC 24.32(1) – Definition of Misconduct  
871 IAC 24.32(8) – Current Act

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated July 15, 2009, reference 01, that held the claimant was not discharged for misconduct on June 16, 2009, and benefits are allowed. A telephone hearing was held on August 10, 2009. The claimant participated. Tim Laffoon, Terminal Manager, participated for the employer.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment as a full-time truck driver on January 31, 2007. The claimant last worked for the employer on June 9, 2009.

The claimant was discharged for a roll-over accident on June 9, 2009 that occurred when he swerved to miss a deer while experiencing a lane change to the shoulder, as he entered a construction zone on Interstate 35, south of Des Moines, near exit 52. The accident caused a property damage loss to the cab, trailer and cargo of approximately \$150,000.00. Prior to the accident, the claimant had received written warnings for a backing accident on May 10, 2007, and driving too fast while making a sudden lane change on September 19, 2007. The claimant was told he was discharged do to the amount of the accident loss.

**REASONING AND CONCLUSIONS OF 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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for a current act of misconduct in connection with employment on June 9, 2009.

The claimant did not commit any intentional act of misconduct when he was confronted with a deer on the roadway as he was entering a construction zone that required him to make a right lane change unto the shoulder area of I-35. It is understandable that the claimant was focusing on the lane-change maneuver when he was confronted with a deer that made the situation more challenging than under normal driving conditions. The cost of the accident is not a factor in determining whether the incident is misconduct.

**DECISION:**

The department decision dated July 15, 2009, reference 01, is affirmed. The claimant was not discharged for any current act of misconduct on June 9, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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