

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS E HINDS
Claimant

APPEAL NO. 13A-UI-12203-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTRAL PETROLEUM TRANSPORT INC
Employer

OC: 10/06/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Thomas Hinds (claimant) appealed a representative's October 24, 2013, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Central Petroleum Transport (employer) for having too many accidents for which he was found at fault. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 21, 2013. The claimant participated personally. The employer participated by Marcia Crabb, Owner/Manager.

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 November 10, 2003, as a full-time truck driver. The claimant signed for receipt of the employer's handbook. The claimant understood that the driver is in charge of all equipment on his truck. On November 12, 2012, the employer issued the claimant a written warning for having too many accidents for which the claimant was at fault. The warning covered speeding tickets, damage to company property, and the claimant's personal injuries. The employer notified the claimant that further infractions would result in termination from employment.

On October 4, 2013, the claimant took a truck load of 150 degree liquid grease to Trainer, Iowa, to be unloaded. The claimant remained in the truck while the customers' workers unloaded the grease. The claimant did not get out of the truck to open the correct valve and the customers' workers did not open the valve on the claimant's truck. The trailer crushed and was totaled. The accident could have potentially cause bodily harm to the employees if the trailer had exploded. The trailer cost approximately \$40,000.00 and was insured. The employer suspended the claimant immediately and later terminated the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was 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.

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). Repeated unintentionally careless behavior of claimant towards subordinates and others, after repeated warnings, is misconduct. Greene v. Employment Appeal Board, 426 N.W.2d 659 (Iowa App. 1988). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions regarding obeying traffic laws and company policies. In the final incident, the claimant's failure to follow the employer's policy and take care of the employer's equipment resulted in property damage. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's October 24, 2013, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css