

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DARIN LILLIE
Claimant

APPEAL NO: 13A-UI-06402-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITED PARCEL SERVICE
Employer

OC: 05/05/13
Claimant: Appellant (2)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Darin Lillie (claimant) appealed an unemployment insurance decision dated May 22, 2013, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from the United Parcel Service (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 8, 2013. The claimant participated in the hearing. The employer provided a telephone number but was not available when that number was called for the hearing, and therefore, did not participate. This case was heard by Administrative Law Judge Julie Elder. Before a decision could be issued Judge Elder went on an indefinite leave of absence. The case was re-assigned to Administrative Law Judge Susan Ackerman per direction from lead worker Administrative Law Judge Teresa Hillary. Judge Ackerman is hereby issuing a decision based upon the taped recording of the hearing and the exhibits admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

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 as a full-time package driver on February 13, 1989. He was discharged on May 2, 2013 after he was in an accident on April 30, 2013 in which he failed to stop at a stop sign. Damages were over \$8,500.00 and it is considered a serious accident if damages are more than \$4,400.00. The claimant had no written warnings in the past three years and had gone 14 years without having an accident. He grieved the separation through the union and was reinstated on June 3, 2013.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has

discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits due to work-related misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on May 2, 2013 for an auto accident he had on April 30, 2013. When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer did not participate in the hearing and failed to provide any evidence. The evidence provided by the claimant does not rise to the level of job misconduct as that term is defined in the above stated Administrative Rule. The employer failed to meet its burden. Work-connected misconduct has not been established in this case and benefits are allowed.

DECISION:

The unemployment insurance decision dated May 22, 2013, reference 01, is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css