

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHARON PARROTT KILLINGER
Claimant

APPEAL NO. 10A-UI-02062-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MATT STOOKEY TRUCKING INC
Employer

**Original Claim: 01/03/10
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Sharon Parrott Killinger (claimant) appealed an unemployment insurance decision dated February 3, 2010, reference 02, which held that she was not eligible for unemployment insurance benefits because she was discharged from Matt Stookey Trucking, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 22, 2010. The claimant participated in the hearing with Attorney Jim Hamilton, Merle Killinger, and Thomas Stevens of Lone Star. The claimant also had Ryan Nielsen attend the hearing, but he did not offer testimony. The employer participated through owner Matt Stookey. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time truck driver from September 28, 2009 through January 4, 2010. She was discharged for too many infractions of company policy. The employer contracts with FedEx Ground and its drivers are subject to Federal Department of Transportation rules and regulations. The claimant was responsible for taking care of the employer's equipment and for inspecting that equipment prior to its use. The claimant was driving the employer's 2005 Volvo semi-truck. The employer purchased the truck in September 2009 and the truck was inspected both before and after the purchase. Additionally, the truck passed a Department of Transportation inspection before it was put on the road.

The claimant's truck was sitting in one of the FedEx parking lots lot on October 5, 2009 when she reported damage to the left fairing; there was a large dent on the driver's side skirt fairing. She denied knowing how the damage occurred but did not stop between the two FedEx facilities. There are no other vehicles allowed in this parking lot and the employer testified it is

unlikely that the damage to the truck was the result of another vehicle hitting it since the damage was so low. If another vehicle had hit the truck, the damage would have been much higher on the side of the truck. The employer did not have the fairing repaired but testified it would have cost less than \$1,000.00 to replace the fairing and to paint it. The claimant testified her husband repaired it himself since the damage was near the driver's side steps, which had to be used on a regular basis.

One week later on October 12, 2009, the claimant hit her mirror on another trailer parked in the FedEx ground facility. The employer said the mirror cost \$500.00 to repair but the work was not done by the employer. The claimant said her husband fixed the mirror himself by tightening a screw. The employer said the claimant was given a verbal warning after each incident, but the claimant denied receiving any warnings.

The final incident occurred on December 22, 2009, when the claimant failed to recognize a mechanical failure. As she was driving down the interstate, there was an air leak, which caused the air pressure to fluctuate on the vehicle gauges. The air leak caused the brake shoes to drag on the drum and build up heat. Eventually both inside drive tires exploded as a result of the heat. The axle assembly was so hot that it melted the brake drums and wheels. The claimant testified that the air pressure was not fluctuating; but, her witness who removed the two blown tires, testified that if it was an air leak, the gauges would have fluctuated. The employer paid for the truck to be repaired and he was advised that the damage was caused by an air leak which set the claimant's parking brake.

Had the claimant noticed the air gauge fluctuations, she could have pulled over, but her failure to recognize this mechanical failure resulted in a cost of \$5,600.00 to repair the truck. The employer spends an average of \$1,250.00 in maintenance for its trucks, which was well under what the claimant's truck cost to repair. The claimant was not discharged until January 4, 2010, because she was off work due to the death of her son and the employer did not want to discharge her while she was on bereavement leave.

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.

Iowa Code § 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 claimant was discharged on January 4, 2010 for repeated negligence. 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). In the case herein, the claimant was discharged after three incidents of negligence. Her actions were not isolated incidents and her performance did not meet the standards the employer has the right to expect of employees. While the evidence does not show that the claimant intentionally caused the accidents that led to her termination, the administrative law judge must conclude that the number of accidents in such a short period of time constitutes disqualifying job misconduct. Benefits are therefore denied.

DECISION:

The unemployment insurance decision dated February 3, 2010, reference 02, is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw