

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LELAND G RIDGELY
Claimant

APPEAL NO. 07O-UI-10868-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAGGONER SOLUTIONS CO
Employer

**OC: 09/09/07 R: 12
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Leland Ridgely filed an appeal from a representative's decision dated October 3, 2007, reference 01, which denied benefits based on his separation from Waggoner Solutions Company (Waggoner). On October 25, 2007, an administrative law judge decision was issued affirming the disqualification. Mr. Ridgely filed a further appeal with the Employment Appeal Board. On November 19, 2007, the Employment Appeal Board remanded the matter for a new hearing because Mr. Ridgely had not received notice of the prior hearing. After due notice was issued, a hearing was held by telephone on December 10, 2007. Mr. Ridgely participated personally. The employer opted not to participate in the hearing.

ISSUE:

At issue in this matter is whether Mr. Ridgely was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Ridgely was employed by Waggoner from December 5, 2005 until September 11, 2007 as a full-time driver. He was discharged because the employer's insurance carrier would no longer cover him because of his accidents.

Approximately three months after he began the employment, Mr. Ridgely was involved in an accident in which his vehicle rolled over. It was determined that there was a problem with the steering of the vehicle and he was cited for having defective equipment. Mr. Ridgely had not noticed any problems during his pre-trip check of the vehicle. In June or July of 2007, he struck another vehicle as he was backing up. He checked his surroundings before backing up and noted that there was a grain truck in the area. Because the truck was not moving, he proceeded to back up. The grain truck apparently started moving at the same time. Mr. Ridgely applied his brakes when he noted the other truck moving but was unable to stop in time to avoid hitting it.

Mr. Ridgely's final accident was on August 27. He believed his load shifted as he was going around a corner. As a result, the vehicle wound up on its side. Mr. Ridgely was notified of his discharge on September 11, 2007. The above matters constituted the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Ridgely was discharged because he was no longer covered by the employer's vehicle insurance carrier. Where an individual's own conduct renders him unemployable, he is guilty of misconduct within the meaning of the law. See Cook v. Iowa Department of Job Service, 299 N.W.2d 698 (Iowa 1980). However, there remains the question of whether the conduct that rendered him unemployable constituted misconduct.

Mr. Ridgely was no longer covered by the employer's insurance because of his accident record. The evidence failed to establish that he was at fault in the accident that occurred three months into his employment. The fact that he was cited for having defective equipment suggests that the accident was caused by equipment failure. The evidence failed to establish that the equipment problem could or should have been detected by Mr. Ridgely during his pre-trip check. The administrative law judge cannot conclude that he was at fault in the June or July, 2007, incident. He took the precaution of checking his surroundings before attempting to back up. He struck the other vehicle only because they both started to move at the same time. He took steps to avoid hitting the other vehicle but was unable to stop in sufficient time to avoid contact.

The evidence also failed to establish to the satisfaction of the administrative law judge that Mr. Ridgely was at fault in the accident of August 27. The accident may, in fact, have been caused by the load shifting. The employer had the burden of proof in this matter. The burden included establishing that Mr. Ridgely either deliberately or intentionally engaged in conduct contrary to the employer's interests or that he was negligent to such a degree that it manifested a substantial disregard of the employer's standards. The employer has failed to provide evidence to sustain its burden of proof.

For the reasons cited herein, the administrative law judge concludes that disqualifying misconduct has not been established. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). Benefits are allowed.

DECISION:

The representative's decision dated October 3, 2007, reference 01, is hereby reversed. Mr. Ridgely was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css