

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LOREN J DURGIN
Claimant

APPEAL NO. 13A-UI-02114-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

FIVE STAR COOPERATIVE
Employer

**OC: 04/22/12
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the representative's decision dated February 20, 2013, reference 02, which held that the claimant was not eligible for unemployment insurance benefits. After due notice was issued, a hearing was held by telephone conference call on March 20, 2013. The claimant participated personally. Mark Everett was a witness for the claimant. The employer participated by John Winters, the feed department manager. The record consists of the testimony of John Winters; the testimony of Loren Durgin; and the testimony of Mark Everett.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge makes the following findings of fact:

The employer is in the agricultural business. The claimant was hired as a part-time truck driver on September 10, 2012. One week prior to his termination he began getting full-time hours. The claimant's last day of work was January 25, 2013. He was terminated on January 25, 2013.

The incident that led to the claimant termination occurred after midnight on January 25, 2013. The claimant was delivering feed and discovered that he was in the wrong driveway. While he was backing out, he scraped the side of the semi-trailer on a pole. The amount of property damage has not been determined but the employer estimates that it will be about \$5,000.00.

The claimant had previously damaged the same truck when he tipped the trailer while going around a corner. This incident occurred during the week of November 10, 2012. The damage done in that accident was \$35,000.00 The claimant also was involved in an incident between these two incidents where he creased a fender when going into the parking lot where the feed is loaded.

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. As a general rule, simple negligence in isolated situations does not constitute misconduct unless the evidence shows a wanton pattern of carelessness. The employer has the burden of proof to show misconduct.

The claimant is not eligible for unemployment insurance benefits. The administrative law judge concludes that the greater weight of the evidence shows a pattern of wanton carelessness on the part of the claimant while driving the employer's truck. The claimant had three accidents within approximately two months. All were due to carelessness on his part. In the final incident, the claimant was in the wrong driveway and scraped the side of a pole while backing out of the driveway. He did approximately \$5,000.00 worth of damage. The first incident involved \$35,000.00 in damages. The claimant was clearly at fault in all accidents. Accordingly, it is determined that the claimant was discharged for misconduct. Benefits are denied.

DECISION:

The unemployment insurance decision dated February 20, 2013, reference 02, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible..

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css