

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRIS N MELLECKER

Claimant

APPEAL NO. 13A-UI-03180-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

COR-LYN ENTERPRISES INC

Employer

OC: 02/10/13

Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Chris Mellecker (claimant) appealed a representative's March 7, 2013 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Cor-Lyn Enterprises, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 15, 2013. The claimant participated personally. The employer participated by Michael Williams, President.

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 September 4, 2012, as a full-time driver. The employer does not have a handbook. The employer did not issue the claimant any warnings during his employment. On January 31, 2013, the claimant entered a parking lot and hit an overhead break away security gate. The claimant reported the incident and there was no damage. No warning was issued. On February 4, 2013, the claimant delivered to a residence. The claimant noticed a low lying overhead cable extending over the driveway. The claimant attempted to stop but the driveway was slick. The cable came away from the house but there was no damage. The claimant reported the incident and the employer did not issue the claimant a warning.

On February 5, 2013, the employer told the claimant to drive a truck with a manual transmission. The claimant knew how to drive a truck with a manual transmission. The employer did not inform the claimant that the parking brake had a knob on top for the driver to adjust the brake's tension. As the claimant drove on February 5, 2013, his hand moved the knob and loosened the tension. At some point he noticed that the truck rolled after setting the parking brake. The claimant reset the brake and made sure the truck was positioned before removing his keys, exiting the van, and removing packages. As he did so the truck rolled into a

parked car. This caused \$4,500.00 to the two vehicles. The employer terminated the claimant on February 11, 2013, for having three accidents.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not 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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct. The claimant's accident on January 31, 2013, was the claimant's fault. The accident on February 4, 2013, was due to weather conditions. The accident on February 5, 2013, was due to the employer's lack of training the claimant about the equipment. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's March 7, 2013 decision (reference 01) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css