

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MICHAEL D GOGG**  
Claimant

**DEE ZEE INC**  
Employer

**APPEAL 17A-UI-07077-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/16/16**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the July 12, 2017 (reference 04) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for having too many accidents for which he was found at fault. The parties were properly notified of the hearing. A telephone hearing was held on August 1, 2017. The claimant, Michael Gogg, participated. The employer, Dee Zee, Inc., participated through Lacey Little, HR Specialist. Claimant's Exhibits A through I and Employer's Exhibit 1 was received and admitted into the record.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a driver, from November 21, 2016, until June 19, 2017, when he was discharged. On claimant's final day of work, he was involved in a vehicle accident with a coworker. Claimant was operating a tractor-trailer at the time, and he was pulling out and preparing to make a right turn. Claimant's coworker, driving her personal vehicle, attempted to pass claimant on the right as he was preparing to make his wide right turn. As claimant was turning, the side of his trailer hit the coworker's car. Claimant did not hear or feel this happen, and the coworker did not honk or otherwise alert him to what occurred. Claimant did not know he had hit the coworker's car until the employer called him while he was driving. When claimant received the call, he dropped off his load and then returned to the worksite. Claimant had received one prior warning for damaging a door while backing into the employer's dock. (Exhibit I)

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* 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 Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the incident under its policy.

Here, the employer discharged claimant for leaving the scene of an accident. However, claimant provided uncontroverted testimony that he did not know his trailer hit his coworker's vehicle until he received a telephone call from the employer, after he had driven away. Claimant may have been negligent, but he was not acting in deliberate disregard of the employer. The employer has not established that claimant engaged in disqualifying misconduct when he drove away from the scene of the accident. Benefits are allowed, provided he is otherwise eligible.

**DECISION:**

The July 12, 2017 (reference 04) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

lj/scn