

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN F WALSH

Claimant

APPEAL NO. 08A-UI-02253-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARTEN TRANSPORT

Employer

**OC: 02/03/08 R: 02
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated February 29, 2008, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on March 24, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Jaclynn Peterson participated in the hearing on behalf of the employer. Exhibits One and Two were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as an over-the-road truck driver from January 4 to January 31, 2008. The claimant was informed and understood that under the employer's work rules, he could be disciplined for negligence or improper conduct leading to damage to the property of the employer or a customer and for an accident that was due to his neglect. He was also informed that an accident within the first 30 days of employment could be grounds for immediate discharge.

On January 25, 2008, the claimant was unloading a load a customer's location in Brookfield, Massachusetts. The dock was located inside a building, and the claimant was required to snake the truck back to the dock in a very tight quarters. After unloading, he proceeded very slowly and carefully, but despite his best efforts he caught the corner of a wall in the building on the trailer door. The trailer door was sheered off its hinges. The hinges are designed to sheer off under pressure to prevent damage to the trailer. The claimant got the door fixed for approximately \$280.00.

The employer discharged the claimant on January 31, 2008, for violating its policy by having one accident with his first 30 days of employment.

The employer's account is not presently chargeable for benefits paid to the claimant, since it is not a base period employer on the claim.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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.

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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

While the employer may have been justified in discharging the claimant based on its work rules, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful and substantial misconduct has been proven in this case. Even if the accident was due to some neglect on the claimant's part, it was a single instance of negligence, which does not meet the standard for disqualification under the unemployment insurance law.

The employer's account is not presently chargeable for benefits paid to the claimant, since it is not a base period employer on the claim. If the employer becomes a base period employer in a future benefit year, charges to the employer will be determined by the state in which the wages were reported.

DECISION:

The unemployment insurance decision dated February 29, 2008, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw