

BEFORE THE
STATE OF WISCONSIN
LABOR AND INDUSTRY REVIEW COMMISSION

In the matter of the
unemployment benefit claim of

RANDEL J. VRUWINK, Employee

Hearing No. 91-400355 AP

Involving the account of

DISTRIBUTION SERVICES, INC., Employer

SEE ENCLOSURE AS TO TIME
LIMIT ON FURTHER APPEAL.

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Pursuant to the timely petition for review filed in the above-captioned matter, the Commission has considered the petition and all relief requested. The Commission has reviewed the applicable records and evidence and finds that the Appeal Tribunal's findings of fact and conclusions of law are supported thereby. The Commission therefore adopts the findings and conclusions of the Appeal Tribunal as its own.

DECISION

The decision of the Appeal Tribunal is affirmed. Accordingly, the employe is eligible for benefits, if he is otherwise qualified.

Dated and mailed

November 5, 1991

105-CD1010

/s/

Pamela I. Anderson, Commissioner

/s/

Richard T. Kreul, Commissioner

MEMORANDUM OPINION

The employer has petitioned for Commission review of the adverse Appeal Tribunal Decision, but has stated no specific objections thereto. For the following reasons, the Commission believes the Appeal Tribunal Decision to have been correct. Although the employer discharged the employe for having four accidents in an approximately 13-month period, the record indicates that the employe was at fault in only two of the accidents. In both instances where the door of the employe's trailer came unsecured and led to mishap, the employe was not at fault. There is nothing to indicate that the employe could have prevented the November 15, 1989 accident. Likewise, it is the co-worker who assisted the employe in securing the doors to his trailer, if anyone, who is responsible for the October 26, 1990 mishap. The employe admittedly was fully responsible for the July 29 and December 17, 1990 accidents. There are mitigating circumstances here as well, though. In the former instance, the incident occurred late at night when the employe was tired, and in an area not well lit. As to the latter, the vehicle the employe struck was in the employe's "blind spot"; in addition, the employe's point is well-taken that he could not simply stop in the middle of a highway in order to clean his mirrors. The misconduct standard under Wisconsin law is a stringent one to meet; there is no indication that any of the employe's failures were intentional or egregious enough to amount to gross negligence, so the Commission has affirmed the Appeal Tribunal's finding of no misconduct.

cc: Steven B. Goff
Attorney at Law
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