

STATE OF WISCONSIN
LABOR AND INDUSTRY REVIEW COMMISSION
P O BOX 8126, MADISON, WI 53708-8126 (608/266-9850)

JOHN D TRUMBLE, Employee

UNEMPLOYMENT COMPENSATION
DECISION

Hearing No. 96602844WK

W O W DISTRIBUTING CO INC, Employer

SEE ENCLOSURE AS TO TIME
LIMIT AND PROCEDURES ON
FURTHER APPEAL

An administrative law judge (ALJ) for the Division of Unemployment Insurance of the Department of Workforce Development (Department of Industry, Labor and Human Relations prior to July 1, 1996) issued a decision in this matter. A timely petition for review was filed.

The commission has considered the petition and the positions of the parties, and it has reviewed the evidence submitted to the ALJ. Based on its review, the commission agrees with the decision of the ALJ, and it adopts the findings and conclusion in that decision as its own.

DECISION

The decision of the administrative law judge is affirmed. Accordingly, the employee is eligible for benefits, if otherwise qualified.

Dated and mailed

AUG 23 1996

trumbjo.usd:105:6

/s/

Pamela I. Anderson, Chairman

/s/

Richard T. Kreul, Commissioner

/s/

David B. Falstad, Commissioner

MEMORANDUM OPINION

The commission has affirmed the appeal tribunal decision, because it agrees with the administrative law judge's conclusion of no misconduct. Absent occasions of gross negligence, the commission generally holds that two accidents in a year are insufficient to constitute the wanton and wilful disregard of an employer's interests which is misconduct for unemployment compensation purposes. It has also been recognized that driving constantly subjects an employee to hazards and traffic difficulties, and that a driver who escapes his or her work completely "unscathed" is exceptional rather than representative of the performance an employer reasonably may expect of employees. 1976 Unemployment Compensation Digest, No. 71-A-371, MC at 130-31. Finally, the accident which precipitated the employer's discharge of the employee, at worst can be characterized only as minor, and with circumstances mitigating even that characterization. The record indicates that the employee's normal route to his delivery spot was impeded by a gate. For these reasons, and those stated in the appeal tribunal decision, the commission has affirmed that decision.