

GARY S. BAUER,**DECISION**

Plaintiff,

Case No. 91-CV-346

vs.

**LABOR AND INDUSTRY REVIEW COMMISSION and
PAPER CORPORATION OF AMERICA,**Defendants.

This is an administrative review action. Petitioner challenges his denial of unemployment benefits, even though he does not challenge his termination.

The only issue on appeal is whether the employee's conduct amounted to misconduct pursuant to Sec. 108.04(5), Stats., thereby disqualifying plaintiff from unemployment benefits.

Plaintiff was employed 22 years by Paper Corporation of America as a truck driver. He was terminated because of his poor driving record. There is no dispute concerning the nature or number of accidents caused by plaintiff in the course of his employment. The final accident which led to plaintiff's firing occurred on April 2, 1991, when he hit another car and caused \$725.00 damage.

Plaintiff does not dispute he caused all of the accidents that happened, but does contend that none were intentional. Defendants do not allege that plaintiff had the mental purpose to specifically cause these accidents; they simply believe his accident record constituted a pattern of conduct detrimental to its own business interests.

Misconduct under Sec. 108.04(5), Stats., was defined in Boynton Cab Co. v. Neubeck, 237 Wis. 249, as:

". . . conduct evincing such wilful or wanton disregard of an

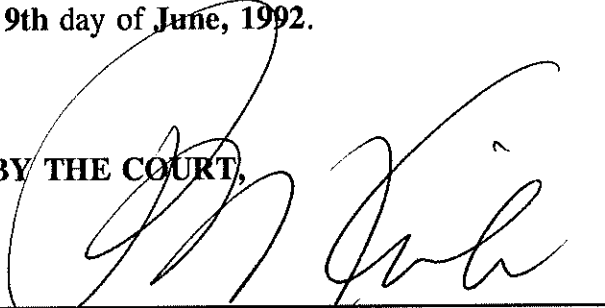
employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer. . . . "

This definition of misconduct is not exclusively limited to intentional misconduct. It encompasses those types of conduct that are sufficiently adverse to an employer's best interest to be detrimental. Applying this more generic definition of misconduct to plaintiff's repeated history of motor vehicle accidents, it is apparent that LIRC was correct in finding Sec. 108.04(5), Stats., misconduct. Plaintiff's poor driving record simply meets the judicially established definition of misconduct by showing a substantial disregard of his employer's interests.

Therefore, I adopt the position of defendant in all respects, and make it my own. Attorney Buehler is directed to prepare the appropriate order in conformance herewith.

Dated at Waupaca, Wisconsin, this 9th day of June, 1992.

BY THE COURT,



Philip M. Kirk, Circuit Judge