

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AGHA ABBAF
Claimant

APPEAL NO: 18A-UI-04702-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC
Employer

OC: 03/11/18
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's unemployment insurance decision dated April 10, 2018, (reference 02) which denied benefits, finding that the claimant was discharged on February 13, 2018, for violation of a known company rule. After due notice was provided, a telephone hearing was scheduled for and held on May 10, 2018. Claimant participated. Employer participated by Ms. Kim Bateman, Human Resource Specialist. Employer's Exhibits A and B were admitted into the hearing record.

ISSUE:

The issue is whether the claimant was discharged for work connected misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds: Agha Abbaf was employed by CRST Van Expedited Inc. from December 20, 2017 until February 13, 2018, when he was discharged from employment. Mr. Abbaf was employed a full-time over-the-road tractor trailer driver and was paid by the mile. His immediate supervisor was the driver manager.

Mr. Abbaf was discharged on February 13, 2018, based upon a driving mishap that had taken place on February 10, 2018. On that date, the claimant was operating a company tractor trailer unit and was involved in a roll-over mishap causing extensive damage to the tractor trailer unit. When law enforcement arrived at the accident scene, they reviewed a tape of an on-board camera that had been activated during the moments leading up to the roll-over. The film showed the tractor trailer unit being operated by Mr. Abbaf "drifting from the right hand lane of the interstate highway until the trucks right wheels left the pavement and rolled over." The police report concluded that it was a single vehicle mishap, the claimant was issued no driving citations. After the matter was reviewed by the company's safety department, a decision was made to terminate Mr. Abbaf because Mr. Abbaf had not maintained control of the company truck, and the roll over during the incident was preventable.

Established company policy allows for disciplinary action up to and including termination for operating a company vehicle in a dangerous or careless manner. Company policy specifically provides for termination if the driver is involved in a serious accident due to loss of control, and roll-overs. Based upon the severity of the mishap, the amount of damage to the equipment, and a review of the on-board security camera tape, the employer concluded that the claimant should be discharged from employment.

It is the claimant's position that an automobile unexpectedly veered into his lane from left side, and he gradually steered to the right to avoid colliding with the car until the tractor and trailer turned over when the wheels on the right side of the unit left the roadway. The truck on-board camera showed no depictions of another vehicle at the time of the incident.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes work connected misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. It does.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

The employer has the burden of prove the claimant was discharged for work connected misconduct as defined by the Iowa Employment Insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated negligence or negligence that equals willful misconduct in culpability. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000).

In this case, the claimant was discharged after he lost control of a company tractor trailer unit, causing the unit to roll-over and sustain substantial damage. The truck unit's on-board camera showed the presence of no other vehicles in the proximity of the truck and trailer unit. The employer concluded that the claimant was operating the company truck in dangerous, careless manner which resulted in a serious and costly roll-over mishap.

Although Mr. Abbaf did not intend of the accident to occur, the evidence establishes that his carelessness was of such a degree so as to manifest equal culpability under the law.

The administrative law judge finds the claimant's testimony that the mishap was caused by another vehicle to strain credibility. No second vehicle was mentioned in any of the police reports and was not on the security tape of the on-board video camera. For these reasons, the employer has sustained its burden of proof in establishing that the claimant's discharge took place under dis-qualifying conditions.

DECISION:

The representative's unemployment insurance decision dated April 10, 2018, reference 02 is affirmed. Claimant was discharged for work connected misconduct. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn