

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RICKIE PERKINS**

Claimant

**WEST SIDE TRANSPORT INC**

Employer

**APPEAL NO: 13A-UI-01344-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/18/12**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the January 25, 2013, reference 05, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 6, 2013. The claimant participated in the hearing. Amy Jordan, Director of Human Resources, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time over-the-road truck driver for West Side Transport from June 7, 2012 to September 12, 2012. He was discharged for accumulating six late deliveries and 450 out of route miles during his tenure with the employer.

The claimant received a written warning June 18, 2012, after making three late deliveries because he was having difficulty understanding the Qualcomm system (Employer's Exhibit One). Additionally, the claimant drove 110 miles out of his route and also deadheaded home June 17, 2012, driving 138 miles without a load (Employer's Exhibit One). On July 19, 2012, the claimant received a second written warning for taking a load to Carroll, Iowa, and driving 315 extra miles out of his route, when he was supposed to be going to Missouri (Employer's Exhibit Two). He was originally assigned a load in Nebraska but then was told to take a load to Missouri. He had already programmed the Nebraska trip into his GPS and forgot to change it to the Missouri destination, which caused him to start out for Nebraska before he realized his error, resulting in the 315 extra miles.

On September 12, 2012, the claimant's employment was terminated after he delivered two loads late and the employer determined his tardiness was due to driver error (Employer's Exhibit Three). He became lost on one route and drove around for two to three hours without

notifying dispatch, which caused him to be late for that delivery as well as the second stop he was required to make (Employer's Exhibit Three).

The employer usually only allows three late loads during an employee's probationary period but wanted to work with the claimant and allowed him six late deliveries before terminating his employment because the claimant was not showing improvement (Employer's Exhibit Four). The employer's policy explains the disciplinary procedure for service failures and the claimant was familiar with those policies and procedures (Employer's Exhibits Four, Five and Six).

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 claimant is a new over-the-road truck driver and was hired out of school. The employer understands there will be occasions when there will be late deliveries and makes allowances for three service failures in the new employee's first three months of employment. The claimant accumulated six late deliveries and was 450 miles out of route during his probationary period and even though the employer gave him additional chances for improvement, the claimant's service failures continued. Given that the employer's ability to deliver on time is the hallmark of its business, it had to be concerned and finally take the action of terminating the claimant's

employment after warning him about the issues he was having being on time, driving the correct route and communicating with dispatch. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

**DECISION:**

The January 25, 2013, reference 05, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/css