

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD D WILSON
Claimant

APPEAL NO. 09A-UI-16950-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 10/04/09
Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Richard Wilson, filed an appeal from a decision dated October 26, 2009, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on December 15, 2009. The claimant participated on his own behalf. The employer, Hy-Vee, participated by Fueller Bob Post, Vice President of Transportation Jim Moore, Truck Mechanic Tyler Henderson and was represented by UIS in the person of Daniel Spier. Human Resources Director Natalie McGee observed the hearing but did not offer testimony.

ISSUE:

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

FINDINGS OF FACT:

Richard Wilson was employed by Hy-Vee from December 15, 2005 until September 9, 2009 as a part-time driver. He was given a final warning on August 24, 2009, by Vice President of Transportation Jim Moore, because he had violated DOT rules by driving more than the allowed 11 hours before taking a break. The warning notified him he could be discharged for any further violations of DOT or Hy-Vee policies.

On September 5, 2009, Mr. Moore received information from Fueller Bob Post and Truck Mechanic Tyler Henderson about the truck Mr. Wilson had been driving that day. The truck was very muddy, two tires were completely ruined and one cross member bent. The two employees had seen the damage to the tires and had also been suspicious when the claimant had taken the truck through the truck wash several times to remove a lot of mud. Mr. Henderson inspected the tires, the tractor and the trailer and found the damage. Mr. Wilson had only told them he had “gone off on a soft shoulder” but the damage could not have resulted from something so minor.

Mr. Moore reviewed the on board GPS and determined where, in Interstate 29, something likely occurred. The GPS would register any sudden stops. Another employee was sent out to that

location and reported seeing evidence of a large north bound vehicle going through the median and into the south bound lane.

On September 9, 2009, Mr. Wilson was questioned by Mr. Moore. At that time he admitted he had lost control of the truck, gone through the median where he was north bound in the south bound lane. He continued in the south bound lane until he could exit and get back on track. He did not inspect the vehicle until he got to his destination in Sioux City, Iowa, and did not see the damage to the tires, even though Mr. Post had seen it as soon as he pulled up to the fuel island in his home terminal some 12 hours later, before the truck was washed.

The claimant had filled out an accident report once Mr. Post and Mr. Henderson had expressed some doubt about the damage resulting from merely being on a soft shoulder. The company policy is to report any accident, except one with less than \$250.00 in damage, as soon as possible. Minor damage can wait to be reported until the driver returns to the terminal.

Mr. Moore interviewed Mr. Wilson on September 9, 2009, and asked why he had not reported the accident immediately. The claimant said he felt he had done a good enough job keeping the truck from tipping over, recovering it and getting on with his route. He had not inspected the vehicle carefully and was driving on two seriously damaged tires for more than 12 hours. In addition, he had attempted to conceal the accident by stating he had gotten the truck muddy and damaged the tires by going onto a soft shoulder.

The employer told him he was fired for failing to promptly report a serious accident which caused damage to the truck and trailer and by continuing to operate the truck with damaged tires and bent cross member.

REASONING AND CONCLUSIONS OF LAW:

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 had been advised his job was in jeopardy if he violated any DOT or company policies. Less than three weeks later he lost control of his vehicle, driving it through the median and into a lane for opposing traffic. He did not report this immediately even though it caused noticeable damage to the vehicle's tires. Instead he waited more than 12 hours when he returned to the terminal and even then he did not immediately report the accident. It was not until he was confronted by the fueler and the truck mechanic and the obvious damage was pointed out to him that he made any effort to report it. Even then he tried to downplay the seriousness of the incident by saying the damage had been caused by going onto a soft shoulder.

When confronted with the report from the accident scene that showed he had lost control and gone through the median, he again downplayed it by saying he thought it was okay not to report it because he had managed not to tip the truck over and did not hit anyone when he was traveling in the opposing lane. This is beside the point. The employer requires an immediate report of anything other than minor damage and the damage here was more than minor. The claimant failed to comply with the company policy to report the accident immediately. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of October 26, 2009, reference 01, is affirmed. Richard Wilson is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs