IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

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

JOSH C GOLDSBERRY
Claimant

HOTSHOT DELIVERIES INC
Employer

APPEAL NO. 18A-UI-01335-S1-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/07/18
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Hotshot Deliveries (employer) appealed a representative's January 25, 2018, decision (reference 01) that concluded Josh Goldsberry (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 22, 2018. The claimant participated personally. The employer participated by Jacob Hillwick, President. Exhibit D-1 was received into evidence. The employer offered and Exhibit 1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on November 30, 2015, as a full-time lead driver. The employer did not have a handbook. On November 30, 2015, the claimant signed for receipt of the Motor Vehicle Record Grading Criteria. Above the claimant's signature the document states, "By signing below I agree and understand that my driving record is of the upmost importance for my safety, the safety of others on the roads, and the proper upkeep of HSD vehicles, and that if I accumulate too many violations, I may not be able to keep my employment with HSD." The document indicates that drivers with "careless/reckless/impudent driving" may be excluded from driving privileges. The employer did not issue the claimant any warnings during his employment. On August 20, 2016, the claimant was promoted to terminal manager.

In October 2017, the claimant injured his right elbow at work and reported the injury to his employer. Business was brisk, so the employer did not send the claimant to the doctor. The claimant was restricted from working as a terminal manager but could drive a twenty-six foot box truck. On October 26, 2017, the president asked the claimant to return to driving with no decrease in pay because the company did not have enough drivers. The claimant understood the change to be temporary. The president knew the change was permanent and the terminal manager position was eliminated.

In mid-December 2017, the claimant told the employer he lost the grip in his right hand because of his elbow injury. On December 18, 2017, the employer sent the claimant to see a doctor. The doctor restricted the claimant to light duty work and ten pounds of lifting. The employer continued to have the claimant drive the truck without being able to grip his right hand. It was a busy time for the employer.

On December 22, 2017, the claimant was driving the employer's short truck. He stopped at a stop sign and proceeded when he did not see any traffic. After starting out, a car hit the truck on the truck's passenger side at the rear of the cab. A law enforcement officer cited the claimant with failure to obey a stop sign and failure to yield the right of way. The claimant did not work after December 22, 2017. On December 29, 2017, the employer terminated the claimant when the employer's insurance company determined him to be uninsurable. The employer would have continued to employ the claimant as a lead driver if their insurance company would have insured him.

The claimant filed for unemployment insurance benefits with an effective date of January 7, 2018. The employer did receive notice of the January 24, 2018, fact finding interview but it was not routed to the appropriate person within the business. It had provided its telephone number on the unemployment insurance website. The fact finder called the number and left a message with the employer's appeal rights. The employer did not respond to the message.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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 proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Repeated traffic violations rendering a claimant uninsurable can constitute job misconduct even if the traffic citations were received on the claimant's own time and in his own vehicle. *Cook v. Iowa Department of Job Service*, 299 N.W.2d 698 (Iowa 1980). Court of Appeals held it not misconduct when claimant who needed to drive for employer lost insurability when he went into ditch to avoid hitting deer. Evidence showed no willful violation after he was placed on notice that his driving was a problem. *Fairfield Toyota, Inc. v. Bruegge*, 449 N.W.2d 395 (Iowa App. 1985).

Unlike Bruegge, this claimant was never issued any warnings. He was not put on notice that his driving was a problem or that he was in danger of losing his insurance. The Motor Vehicle Record Grading Criteria does not mention insurance. The claimant was never cited for any of the violations listed on the Motor Vehicle Record Grading Criteria. The final incident was an accident; it was not intentional or reckless. For whatever reason, the claimant did not see the other vehicle. The employer admits that the claimant would be working for the employer if insurance could cover him. The employer did not provide sufficient evidence of willful and deliberate misconduct that was the final incident leading to the discharge. It did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's January 25, 2018, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs