

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAWRENCE B DUPONT
Claimant

APPEAL NO. 06A-UI-11032-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND TRANSPORTATION INC
Employer

**OC: 10/15/06 R: 01
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Lawrence DuPont, filed an appeal from a decision dated November 14, 2006, 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 4, 2006. The claimant participated on his own behalf. The employer, Heartland Transportation, Inc. (Heartland), participated by Owner Dave Lair.

ISSUE:

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

FINDINGS OF FACT:

Lawrence DuPont was employed by Heartland Transportation from February 9 until October 18, 2006. He was a full-time over-the-road truck driver. Mr. DuPont had been involved in three accidents during his employment, September 4, September 22 and October 1, 2006. The first accident he maintained had occurred when he was parked in a parking lot and in the truck's sleeper when another vehicle struck the tractor. The second incident he lost control of the truck and slid into a ditch and required two wreckers to get it out. The third incident he struck a van while passing it on an interstate highway.

Theses incidents were reported to the insurance company and on October 16, 2006, the company informed the employer it would no longer insure Mr. DuPont because of the accidents. The employer cannot allow uninsured drivers to operate its equipment and the claimant was discharged October 18, 2006.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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. IDJS, 299 N.W.2d 698 (Iowa 1980). The claimant may not have been responsible for the first accident but it is apparent he was responsible for the second and third. As these accidents all occurred in less than a month, the claimant's on-going failure to preserve the assets of the employer and perform his job duties properly is conduct not in the best interests of the employer. He is disqualified.

DECISION:

The representative's decision of November 14, 2006, reference 01, is affirmed. Lawrence DuPont 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/css