

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GARY R KONKEL
Claimant

APPEAL NO. 12A-UI-10058-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRAY TRANSPORTATION INC
Employer

OC: 07/15/12
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 8, 2012 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on September 12, 2012. Claimant participated and was represented by Michael Meyer, attorney at law. Employer participated through Company President Darrin Gray. The administrative law judge took judicial notice of the administrative record.

ISSUE:

Did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an over-the-road driver from October 2010 and was separated from employment on July 12, 2012. On July 11 he had a major preventable accident at an off-ramp near Madison, Wisconsin. He drove too fast while turning left and the truck and trailer tipped over on its right side when the load shifted. He had inspected the load (several pallets each weighing several thousand pounds loaded in the center of the trailer) after he left the dock and before he left the customer premises. Another company driver was stopped ahead of claimant in the right of the three left turn lanes and saw claimant driving rather fast in the center of the three left turn lanes. He started into the intersection and then stopped to watch the claimant. Had he continued into the intersection claimant's truck/trailer would have tipped over on his truck/trailer. Wisconsin Highway Patrol cited him for driving too fast for the conditions and failure to secure the load. Claimant admitted to Gray, because of tipping over, he had been travelling too fast when he took the corner.

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 § 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 employer is charged under both federal and state law with protecting the safety of its employees and the general public. It has presented substantial and credible evidence that claimant was acting against the best interests of the employer and the safety of the general public by driving too fast to safely turn left through the intersection given his knowledge of the weight and placement of the load.

DECISION:

The August 8, 2012 (reference 01) 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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw