

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHNNIE F PETERS**  
Claimant

**APPEAL NO. 10A-UI-01462-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**B T INC**  
Employer

**OC: 12/27/09**  
**Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

B T, Inc. filed an appeal from a representative's decision dated January 19, 2010, reference 01, which held that no disqualification would be imposed regarding Johnnie Peters' separation from employment. After due notice was issued, a hearing was held by telephone on March 9 and March 24, 2010. Mr. Peters participated personally and was represented by Laurel Boerner, Attorney at Law. The employer participated by Blaine Martin, Vice President; Keith Lamfers, Director of Safety and Compliance; and Sandy Loney, Director of Human Resources. Exhibits 1 through 12 were admitted on the employer's behalf. The employer was represented by Jennifer Smith, Attorney at Law.

**ISSUE:**

At issue in this matter is whether Mr. Peters was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Peters' last period of employment with B T, Inc. was from December 23, 2004 until December 30, 2009. He was an over-the-road driver. He was discharged from the employment.

Mr. Peters received a written warning on August 28, 2009. The warning addressed two motorist complaints regarding his driving, one in March and the other in August of 2009. The warning also addressed the fact that he had received a warning after an accident on July 21, 2009 in which his trailer struck an overhead wire. The warning also recited the fact that he had used profanity in the shop when attempting to bypass the safety lane. He did not want to go through the safety lane because he was only there to get fuel.

Mr. Peters was warned on October 16 after he reported breaking the air lines when attempting to hook the trailer. He received another warning because his log book was not up-to-date when he was stopped by the Oklahoma Highway Patrol on November 5, 2009. On December 16, 2009, Mr. Peters was suspended for one week after the employer received a complaint from a

McDonald's in Sioux Falls, South Dakota. The restaurant reported that Mr. Peters was rude and threatening and that he kicked the door on his way out.

The decision to discharge Mr. Peters was precipitated by his involvement in an accident that the employer deemed preventable. He picked up a load in Storm Lake, Iowa, on the morning of December 24 and drove it to Omaha, Nebraska. At approximately 5:15 p.m. on December 24, he was dispatched with a load from Omaha to Clarkesville, Arkansas. The employer had sent a QUALCOMM message to all drivers on December 22 alerting them to a storm that was expected in the Midwest. Drivers were told to slow down and watch the weather. Another message was sent on December 23 indicating there was heavy sleet sticking to the roads in Le Mars, Iowa, and that it was starting to snow south of Le Mars. Drivers were admonished to use extreme caution.

On December 23, another QUALCOMM message was sent indicating that the weather was deteriorating in the Midwest and that, as conditions worsened, drivers needed to park the trucks and continue when conditions improved. Drivers were to let dispatch know if they needed to park and ride out the storm. The final message to drivers was on December 24 at 21:19. It told drivers to be aware of winter conditions and to pull off the road if needed.

By the time the final QUALCOMM message was received by Mr. Peters on December 24, he had already been involved in an accident at 20:25. He had moved to the right to avoid another vehicle that had lost control. When he did so, his vehicle went into a ditch. There was no damage to the equipment or the product he was transporting. It cost the employer \$691.50 to have the unit towed from the ditch. The employer believed Mr. Peters could have prevented the accident if he had parked the vehicle when the messages were sent. As a result of this accident and his past record, he was discharged on December 30, 2009.

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

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer's burden included establishing that the discharge was prompted by a current act that constituted misconduct within the meaning of the law. While past acts may be considered in determining the magnitude of a current act, the disqualification must be based on a current act. In the case at hand, the administrative law judge cannot conclude that the final act that triggered Mr. Peters' discharge constituted an act of misconduct.

There was no clear directive to drivers to park their vehicles and wait for the storm to pass. The import of the QUALCOMM messages was that drivers should be observant of the weather conditions in their area and pull off the road if necessary. It was up to the driver's own judgment as to whether the road and weather conditions presented a hazard that required pulling off the road. Given the short distance Mr. Peters travelled, it is clear he was not driving recklessly or at a speed that was inconsistent with the road conditions. The fact that there was an accident does not necessarily mean that Mr. Peters used poor judgment in remaining on the road.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that the employer failed to establish that Mr. Peters' discharge was prompted by an act of misconduct as that term is defined by law. As such, the administrative law judge is not free to consider other, past acts. While the employer may have had good cause to discharge him, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job

Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, benefits are allowed.

**DECISION:**

The representative's decision dated January 19, 2010, reference 01, is hereby affirmed. Mr. Peters was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided he is otherwise eligible.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

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