

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM B HAMILTON
Claimant

CRST VAN EXPEDITED INC
Employer

APPEAL NO: 09A-UI-08242-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/26//09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated June 4, 2009, reference 01, that held the claimant was discharged for misconduct on April 14, 2009, and benefits are denied. A telephone hearing was held on June 24, 2009. The claimant participated. Sandy Matt, HR Representative, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began full-time employment as an over-the-road driver on June 1, 2007. The claimant received an employee handbook that contains employer policy. The policy provides that an employee-driver may be discharged for a preventable accident.

The claimant struck a low-hanging telephone line while leaving a parking lot in Casey, Illinois. The line-break caused a pole to snap, and it struck the rear of a parked vehicle when it fell. The accident occurred in October 2008, and the employer required the claimant to attend a defensive driving course.

While leaving a parking lot in Newberg, New York on April 7, 2009, the claimant's trailer struck the passenger side mirror and fender of a parked vehicle. The claimant immediately reported the accident to dispatch and the matter was referred to the employer's safety department for review. The safety department determined both accidents were preventable, and the claimant was discharged on April 14.

The claimant had some minor infractions for driving out-of-route, private use of a company vehicle and an inspection failure during the course of his employment. The claimant denies the

inspection violation, the private use occurrence and the out-of-route involved another driver while he was riding as a passenger.

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 administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on April 14 due to repeated driving accidents. While safe driving is a standard of behavior that the employer has a right to expect, the claimant's minor parking lot accidents do not constitute job disqualifying misconduct. Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial". When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying. Newman v. IDJS, 351 NW2d 806 (Iowa App. 1984); Henry v. IDJS, 391 NW2d 731 (Iowa App. 1986).

It is understandable that the claimant did not see the low-hanging phone line, and there is no evidence that there was any clearance warning such as in the case of viaducts or bridges. The claimant was not cited for any moving violation in either accident. There is no wrongful intent by the claimant to disregard the employer's policy.

The employer offered no evidence that the other considerations were ever the subject of any warning or discipline and the claimant effectively denied these acts.

DECISION:

The department decision dated June 4, 2009, reference 01 is reversed. The claimant was not discharged for misconduct on April 14, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css