

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES K GOSS
Claimant

APPEAL NO. 09A-UI-11406-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRAY TRANSPORTATION INC
Employer

**Original Claim: 07/05/09
Claimant: Appellant (2-R)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, James Goss, filed an appeal from a decision dated August 5, 2009, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on August 25, 2009. The claimant participated on his own behalf. The employer, Gray Transportation, participated by President Darrin Gray. Exhibits A, B, C, and D were admitted into the record.

ISSUE:

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

FINDINGS OF FACT:

James Goss was employed by Gray Transportation from November 12, 2008 until June 25, 2009 as a full-time over-the-road driver. On June 25, 2009, he was to deliver a load to Elkhart, Indiana, at 6:30 a.m. At 6:00 a.m., he sent a Qualcom message to the dispatcher saying he had a head ache and a stomach ache and he was going to rest. The dispatcher sent him a return message at 6:17 a.m. reminding him he had a 6:30 delivery. From that time on, several messages were sent to him asking if he was moving, asking him to call dispatch, and reminding him he had a delivery to make. He did not respond until shortly after 9:00 a.m., when he messaged he was not feeling well and asking if he could “drop” the load somewhere, he could not make the delivery that day and asking what he should do.

At 9:37 a.m., the dispatcher messaged back saying she was “working on it” and asking why he was in Cicero, Illinois, when he was scheduled to be going to Elkhart, Indiana. He said he would drop the load in St. Francis, Wisconsin, and the dispatcher told him if he was well enough to drive to St. Francis, Wisconsin, he was well enough to go to Elkhart, Indiana. She firmly told him “don’t do that.” Shortly afterward she told him to “stop now” and go to his assigned destination. Then she messaged “this is not the right thing to do.” He was told if he was too sick to deliver the load then he was to stay where he was, otherwise go to Elkhart, Indiana. Finally, after 10:00 a.m. the dispatcher notified Mr. Goss the highway patrol had been alerted, as he was considered to have stolen the equipment. It is against the federal highway

administration regulations to have an interstate shipment crossing state lines if that is not on the route, without prior authorization.

The Wisconsin highway patrol finally located him around 2:24 p.m. at a truck stop. The law enforcement agency had also been contacted by a crisis worker to check on Mr. Goss, as he had called for assistance for his mental and emotional state. When the police officer contacted President Darrin Gray, he did make the observation Mr. Goss should not have been driving. The employer told the police officer at that time to tell the claimant he was fired and to turn over his keys, which he did.

The issue of whether the claimant is able and available for work has not been determined.

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.

There is no doubt the claimant acted in a manner contrary to the employer's best interests. He failed to make the delivery, did not contact the dispatcher as requested, took the company equipment to Wisconsin instead of Indiana in violation of federal highway administrative regulations, and essentially confiscated the employer's equipment for his personal use. That is not in question.

The issue then becomes whether it was a willful and deliberate course of conduct. The record clearly establishes the claimant was not mentally competent at the time of these events on June 25, 2009. He claims to have told the employer he was having a “breakdown,” but the only information he conveyed was that he had a head ache and a stomach ache and needed to rest. He maintained he did not send a particular message via Qualcom, but the documents he himself submitted clearly shows he did. He maintained he could not read all the messages he received telling him to stop, go to Indiana and not go to Wisconsin, but this is clearly not the case, as he was in contact with the dispatcher during that time.

Mr. Goss does not appear to have been capable of understanding the nature and quality of his acts during this time frame. The issue is not whether the employer made a correct decision in separating the claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262(Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment benefits are two separate decisions. *Pierce v. IDJS*, 426 N.W.2d 679 (Iowa App. 1988). 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 in nature. *Newman v. IDJS*, 351 N.W.2d 806 (Iowa App. 1984). The administrative law judge cannot conclude his conduct rises to the level of willful and deliberate misconduct and disqualification may not be imposed.

The issue of whether the claimant is able and available during the course of his unemployment claim should be remanded for determination.

DECISION:

The representative’s decision of August 5, 2009, reference 01, is reversed. James Goss is qualified for benefits, provided he is otherwise eligible. The issue of whether the claimant is able and available for work given his current medical problems is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw