

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHERMAN Y SWANK
Claimant

APPEAL NO. 06A-UI-10294-H2T

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

CONTRACT TRANSPORT INC
Employer

**OC: 04-30-06 R: 02
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 19, 2006, reference 07, decision that allowed benefits. After due notice was issued, a hearing was held on November 7, 2006. The claimant did not participate. The employer did participate through James Nible, Safety Director, and Alan Bergman, Human Resources Manager. Employer's Exhibit One was received.

ISSUE:

Was the claimant discharged for work related misconduct?

Has the claimant been overpaid unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as an over-the-road driver full time beginning August 7, 2006 through September 28, 2006, when he was discharged. The claimant was discharged because the employer's insurance carrier, Great West Casualty, would not cover him because of a speeding ticket he received in California. The claimant did not disclose the speeding ticket when he was hired. Had he done so, the employer believes they could have approached the underwriters at Great West and worked out permission for the claimant to drive for them.

The claimant has received unemployment benefits since his discharge.

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 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.

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 was unable to drive, an essential function of an over the road drivers job, due to a speeding ticket that rendered him uninsurable. His inability to be insured constitutes disqualifying misconduct. Benefits are denied.

DECISION:

The October 19, 2006, reference 07, decision is reversed. 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw/pjs