

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TIMOTHY P GUENTHER**  
Claimant

**APPEAL NO. 10A-UI-07343-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JENSEN TRANSPORT INC**  
Employer

**OC: 11/01/09**  
**Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Timothy Guenther filed an appeal from a representative's decision dated May 13, 2010, reference 05, which denied benefits based on his separation from Jensen Transport, Inc. After due notice was issued, a hearing was held by telephone on July 16, 2010. Mr. Guenther participated personally. The employer participated by Tim Jensen, Managing Director, and Paul Koohy, Dispatcher. Exhibits One through Nine were admitted on the employer's behalf.

**ISSUE:**

At issue in this matter is whether Mr. Guenther 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. Guenther was employed by Jensen Transport, Inc. from June 26 until December 7, 2009 as an over-the-road driver. He was discharged due to tardiness and dishonesty.

On July 6, Mr. Guenther was late picking up his load because he could not find his trailer at the tank wash. He did not contact the employer to report that there was a problem. On July 23, he was late loading and late making his delivery. He was late because his trailer had not been washed. He could not identify who it was he asked to wash his trailer. Mr. Guenther was over an hour late making a delivery on October 20 because he did not allow himself enough time to make the delivery. He did not call either the employer or the customer to advise of a problem until he was already late. On October 29, he was again late loading and late making his delivery. He had forgotten his wash ticket and had to return to get it. He was required to have the wash ticket to show to the loader. He delivered his load almost three hours late. On November 5, Mr. Guenther was suspended for three days due to late loadings and late deliveries. He was to get to the tank wash an hour early in the future.

The final incident that triggered the discharge occurred on December 6. Mr. Guenther was scheduled to load at 11:00 p.m. and, therefore, should have been at the tank wash by

10:00 p.m. At approximately 10:40, the employer contacted the tank wash to advise Mr. Guenther that Cargill wanted to change his delivery time, but he was not there. At 10:51, a message was left on his cell phone advising that he needed to contact the employer. When the employer had not heard from him by 11:00, Cargill was contacted and advised that he would be loading late. Cargill indicated that Mr. Guenther had called at 10:59 to report that he was on his way in. At 11:10, the employer again contacted Cargill. While the employer was speaking with Cargill, Mr. Guenther arrived to be checked in.

The employer reviewed the video surveillance from the tank wash to determine Mr. Guenther's arrival time. He arrived at the tank wash in his personal vehicle at 10:43 p.m. He parked his semi in front of the check-in office at 10:51 p.m. He left the tank wash at 11:02 p.m. and proceeded to Cargill to be loaded. The load was to be delivered by 8:00 a.m. on December 7 in Creston, Iowa, a distance of approximately 206 miles from where he loaded in Cedar Rapids. It was not delivered until 11:10 a.m. Another driver who loaded in Cedar Rapids at 3:30 a.m. on December 7 was able to make his sameday, 9:00 a.m. delivery time to Creston without any problems.

Approximately 80 percent of the employer's business is with Cargill, which utilizes a "carrier rating index" in determining which carriers to use and what rates will be paid. A carrier can have points deducted for late loading and late deliveries. A carrier with a low rating could lose the account or have to accept a lower rate for continued business.

#### **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). Mr. Guenther was discharged for loading late and making deliveries late. He was also discharged because of dishonesty. Prior to his suspension in November, Mr. Guenther had loaded late on two occasions, had delivered late on one occasion, and had both loaded late and delivered late on another occasion. He knew or should have known from the suspension that his continued employment was in jeopardy because of his repeated tardiness. He also knew he was expected to be at the tank wash at least an hour before he was to load.

In spite of the suspension, Mr. Guenther was again late to load on December 6, just a month later. He did not even appear at the tank wash an hour early as he previously told the employer he would. He did not leave the tank wash until after he was already supposed to be at Cargill loading his vehicle. Moreover, he attempted to mislead Cargill into believing he was already at the loading site when he was still at the tank wash. Furthermore, when he met with the employer on December 7, Mr. Guenther insisted that he was at the tank wash an hour early and that he was at Cargill at 11:00. He arrived at the tank wash 15 minutes before he was to load, not one hour.

Mr. Guenther's repeated failure to pick up his loads timely had the potential of costing the employer business. Cargill may have declined to give the employer future business or may have insisted on a lower rate because of late loading. He was also discharged because of dishonesty. The employer had the right to expect honesty from Mr. Guenther. He breached his obligation when he attempted to mislead Cargill into believing he was at the loading site when he was not on December 6. His dishonesty with Cargill could have negatively impacted the employer's customer relationship. He again breached his obligation of honesty on December 7

when he gave the employer false information as to what time he was at the tank wash and Cargill on December 6.

The administrative law judge concludes from all of the evidence that disqualifying misconduct has been established by the evidence. Mr. Guenther's late loading on December 6 and his dishonesty on December 6 and 7 constituted a substantial disregard of the employer's standards and interests. Accordingly, benefits are denied.

**DECISION:**

The representative's decision dated May 13, 2010, reference 05, is hereby affirmed. Mr. Guenther was discharged for misconduct in connection with his employment. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/kjw