IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

KENITH R WALKER
Claimant

CRST FLATBED REGIONAL INC
Employer

APPEAL NO. 11A-UI-14135-LT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10/02/11
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 18, 2011 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on December 8, 2011. Claimant participated. Employer participated through director of dedicated services Jerry Artress. Claimant's Exhibit A was admitted to the record.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an over-the-road driver from June 16, 2010 and was separated from employment on September 28, 2011. On September 22, 2011 he received a citation for speeding 70 mph in a 45 mph zone in Monteagle, Tennessee. Claimant notified his supervisor Brandt and Aaron and Artress while he was at the scene. He was traveling no more than 53 mph when another truck passed him. The ticket was dismissed November 10, 2011 because the patrol car dash camera showed the other truck passing him when the radar measurement was taken. The trucks are governed at 65 mph. The employer's policy calls for immediate termination for moving violations of 15 mph over the speed limit or more. Claimant did not receive a company handbook but was told verbally about the policy of citations for more than 11 mph over the speed limit. He had no prior warnings about traffic violations.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating 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 insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 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. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. IDJS,* 391 N.W.2d 731 (Iowa App. 1986).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. The conduct for which claimant was discharged was not established to be misconduct. The citation was dismissed and even though the claimant may have been traveling at a speed of as much as 53 mph in a 45 mph zone, it was an isolated incident of poor judgment and inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Benefits are allowed.

DECISION:

The October 18, 2011 (reference 01) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed. The benefits withheld shall be paid, provided the claimant is otherwise eligible.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs