

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CAROLYN L JOHNSON

Claimant

APPEAL NO. 12A-UI-02007-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC

Employer

OC: 01/01/12

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 2, 2012, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on March 15, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Sandy Matt participated in the hearing on behalf of the employer. The record was left open for the claimant to submit a copy of a ticket she received on December 7, 2011, that was represented to show that she had received a ticket for going 51 in a 45 miles-per-hour zone. The claimant did not submit the ticket, but instead submitted a notice of compliance document that showed she received a citation in New Mexico on December 7, 2011, and had paid the fine of \$76. The document is not admitted as evidence because it was not the document the claimant said she was submitting.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as an over-the-road driver from December 22, 2010, to December 16, 2011. When the claimant was hired, the employer knew that she had two speeding tickets in 2009. She was not informed that her job was in jeopardy if she had another speeding ticket. She was informed and understood that the driver's handbook states that an employee may be discharged for speeding tickets of 11 miles per hour over the speed limit.

On December 7, 2011, the claimant was driving in New Mexico. She was slowing down after noticing the speed limit changed from 65 to 45. She was stopped by a police officer and informed that she was speeding. She agreed that she might have been speeding because she was in the process slowing down due to the speed limit change.

The officer gave the claimant a speeding ticket. The ticket stated it was for 51 in a 45 mile-per-hour zone, but the police officer wrote on the ticket that he and the driver had

agreed she was going 11 to 14 over. The claimant did not agree to this but accepted the ticket as written and paid the fine.

Around mid-December 2011, the employer received an inspection report completed by the officer who had stopped the claimant. The report stated that she was going 58 in a 45 mile-per-hour zone.

Based on the inspection report and the claimant's prior driving record, the employer discharged the claimant for violating safety expectations on approximately December 16, 2011. The claimant had not received any discipline during her employment.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The preponderance of the evidence shows that the claimant was cited for speeding 51 in a 45 mile-per-hour zone. It was also likely that she was going faster, but the officer used his discretion and issued the ticket for less than what he believed she was traveling.

The Iowa Supreme Court in Cook v. Iowa Department of Job Service, 299 N.W.2d 698 (Iowa 1980), ruled that a delivery driver who lost his insurability due to repeated traffic violations and was discharged for this reason was discharged for work-connected misconduct under the unemployment insurance law. In Fairfield Toyota v. Bruegge, 449 N.W.2d 395 (Iowa App. 1989), the Iowa Court of Appeals distinguished the Cook case stating that in Cook the truck driver was found to have intentionally violated traffic laws knowing that it would jeopardize his employment. On the other hand, Iowa Court of Appeals in Bruegge concluded the final accident that occurred after Bruegge was informed that his job was in jeopardy due to his insurability was not a willful act or omission because he went into a ditch to avoid a deer.

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful and substantial misconduct has been proven in this case. The final incident that led to the claimant must be considered an isolated incidence of negligence. I do not believe the record shows the claimant was intentionally speeding or violating the employer's work rules.

DECISION:

The unemployment insurance decision dated February 2, 2012, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs