

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WENDELL VOSS
Claimant

APPEAL NO. 11A-UI-06562-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCHNEIDER NATIONAL CARRIERS INC
Employer

OC: 09/12/10
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Wendell Voss (claimant) appealed an unemployment insurance decision dated May 5, 2011, reference 03, which held that he was not eligible for unemployment insurance benefits because he was discharged from Schneider National Carriers, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 14, 2011. The claimant participated in the hearing. The employer participated through Bill Huppert, account service manager, and David Williams, employer representative. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time over-the-road truck driver from November 23, 2010 through March 28, 2011. At the time of hire, the claimant was requested to disclose his driving record. A driver can have no more than two tickets for moving violations in the previous 12 months. Drivers cannot have had a severe accident in a non-commercial vehicle in the past 15 years, and a severe accident includes loss of control. The claimant received a citation for inability to control a motor vehicle at some point between the dates of October 12, 2010 to October 29, 2010, but he failed to disclose this to the employer at the time of hire. If he had disclosed this serious accident, he would not have been hired.

The employer's regulatory division conducts annual reviews and a review was conducted on March 1, 2011. The regulatory division notified the claimant's supervisor, Account Service Manager Bill Huppert, on March 8, 2011 that the claimant had failed to disclose an accident and directed Mr. Huppert to question the claimant about it. The claimant told Mr. Huppert that he was traveling when he hit some debris, which hit an air line and forced the trailer off of the road. He further reported that no one was hit and nothing was damaged, so he did not disclose it.

The claimant again failed to be forthright and did not tell Mr. Huppert that he had received the citation for inability to control his motor vehicle.

Mr. Huppert was notified of the actual citation on March 16, 2011, and this was the first point in time that he learned that the claimant was out of criteria. Mr. Huppert put the claimant out of service and the claimant did not drive after this date. Mr. Huppert made every effort he could to see if there was any way the claimant could continue driving, but he was unsuccessful and the claimant was terminated on March 28, 2011.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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.

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 claimant was discharged on March 28, 2011 for failing to disclose a serious accident in which he was cited for loss of control of his truck. The employer requires potential employees to disclose their entire driving record, but the claimant

failed to do this. He contends he did not disclose it because he was "fighting" it. However, the claimant failed to disclose this information a second time on March 8, 2011, when Mr. Huppert specifically asked him about it. The employer's policy is clear in that a driver will not be hired if they have had an accident in the previous 15 years wherein they lost control, and the claimant's contention that he was unaware of that fact is not credible. He was discharged from his last employer precisely because of that serious accident.

The only remaining issue to be addressed is whether the claimant was discharged for a past act. While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge or disciplinary suspension for misconduct cannot be based on such past act(s). The termination or disciplinary suspension of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

The claimant's accident was in October 2010, but he failed to disclose the accident on November 23, 2010. He contends he disclosed the accident in January 2011, but his supervisor had no knowledge of it. The claimant's supervisor was made aware of an accident on March 1, 2011 but had no more information. The supervisor was directed to question the claimant on March 8, 2011 and the claimant again refused to disclose the citation. The supervisor did not become aware of the actual facts until March 16, 2011, at which point the claimant was removed from driving. The discharge occurred on March 28, 2011, but the added delay was only because the supervisor was trying to help the claimant keep his job, even after the claimant had been repeatedly dishonest. Based on the facts herein, the employer acted promptly once it became aware of the claimant's serious accident in which he was cited for loss of control, and the discharge was not for a past act. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated May 5, 2011, reference 03, is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw