

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RAYMOND WALLACE

Claimant

APPEAL NO: 12A-UI-11810-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST SIDE TRANSPORT INC

Employer

OC: 09-02-12

Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 26, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 29, 2012. The claimant participated in the hearing. Amy Jordan, director of human resources, and Dave Figler, safety director, participated in the hearing on behalf of the employer.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time regional truck driver for West Side Transport from January 6, 2011 to August 29, 2012. On April 2, 2012, the employer sent all drivers a new policy on the Qualcomm system regarding speeding. The policy stated speeding was unnecessary and any driver ticketed for going 11 or more miles per hour over the speed limit would be discharged immediately. The Qualcomm system indicated to the employer the claimant received the message regarding speeding, because once the message is opened or read it turns green on the employer's side and says it was received by the driver. If it is not opened, it comes back to the employer in red and says it was undelivered. The claimant's message came back green and said it was received on April 2, 2012. On July 22, 2012, the claimant received a ticket for driving 70 miles per hour in a 55-mile-per-hour zone. The employer routed him back to the terminal and planned to terminate his employment because the employer's speeding policy stated there would be zero tolerance and employees would automatically lose their jobs if caught speeding more than 11 miles per hour over the speed limit. The claimant pleaded with the safety director and the director of driver services to keep his job. Because the claimant was considered a fairly long-term employee and did not have any other tickets or accidents on his record, the employer relented and allowed the claimant to retain his job. It was the only exception to the speeding policy the employer has made. On August 24, 2012, the claimant received a speeding ticket in Indiana for going 70 miles per hour

in a 55-mile-per-hour zone. He reported the ticket and was routed back to the terminal, where his employment was terminated August 29, 2012, for violating the speeding policy for the second time in just over a month.

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.

The claimant was notified of the new policy through the Qualcomm system April 2, 2012. It was his responsibility to read the message and he was responsible for heeding the message. Due to the nature of the employer's business, it cannot call all drivers into the terminal to hold a meeting about a change in policy but instead must rely on the Qualcomm system and drivers know they must read all Qualcomm messages, regardless of whether they are tired or short on time. The claimant stated he did not read the message and was unaware of the change in the speeding policy even though the Qualcomm message turned green on the employer's end, indicating he received and read the message. Even if he did not know of the change in the speeding policy, he cannot claim he did not know of the policy after he received his first speeding ticket July 22, 2012, was routed back to the terminal, pled for his job, and was given a second chance because the offense was a zero tolerance situation and the employer planned to terminate his employment. Thirty-four days, later the claimant received another speeding ticket

for going 70 miles per hour in a 55-mile-an-hour zone and his employment was terminated. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The September 26, 2012, reference 01, decision is affirmed. 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw