

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**DON R SIMPSON**  
Claimant

**MONSON & SONS INC**  
Employer

**APPEAL 15A-UI-02381-JCT**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/25/15**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the February 13, 2015 (reference 01) unemployment insurance decision that denied benefits based upon the claimant's separation. The parties were properly notified about the hearing. A telephone hearing was held on March 25, 2015. The claimant participated with his attorney, Karl Knudson. The employer participated through Ben Monson. Shay Monson was an observer. A second hearing was held on April 9, 2015. The claimant participated with his attorney, Karl Knudson. The employer participated through Ben Monson. Stacey Cox was an observer. Claimant's Exhibits One through Three and Employer's Exhibit One were received into evidence without objection.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as an over-the-road driver and was separated from employment on January 29, 2015 when he was discharged.

Two incidents occurred at the end of the claimant's employment that contributed to the decision to discharge. During January, the claimant drove a route that included West Virginia and Virginia. The claimant had not driven the route for several years but was aware of its mountainous topography. Generally, drivers review their routes and use local signage to determine road conditions. Prior to leaving on the route, the claimant spoke with his co-worker, Troy, who warned him of poor signage in the area. The employer's handbook contains a sections regarding mountain driving, which states in part "You should plan ahead and obtain information about any long steep grades along your planned route of travel. If possible, talking to other drivers who are familiar with the grades to find out what speeds are safe. You must go slowly enough so your brakes can hold you back without getting too hot." (Claimant's Exhibit Three-G)

During the course of the route, the claimant's vehicle weighed up to 80,000 pounds, and at one point, encountered a steep grade; which caused his vehicle to accelerate. The claimant testified the signage was insufficient to warn him and he was not in the correct gear when approaching the hill. When the claimant encountered the steep downhill grade, he was unable to downshift and relied upon riding his brakes to slow his speed, recognizing he did not want them to get too hot. As a result of the claimant's conduct, his vehicle reached a speed of at least 95 miles per hour. The employer's ECM device, which plugged into the claimant's truck and recorded his activity, (including distance driven, location and rate of speed) clocked the vehicle at 99 miles per hour. The claimant nor any person or property was damaged during this incident.

The other discharging event occurred around January 17, 2015. The claimant was in an accident with another vehicle, which he described as a "fender-bender". The result of the accident was approximately \$1350 in damage to the truck's skirting. The claimant did not report the incident or damage to the employer, in accordance with the employer's policies. Once confronted by the employer, the claimant did accept responsibility for the damage and provided subsequent photographs of the vehicle.

The claimant was placed on a one year probationary period beginning May 14, 2014 in response to prior safety related incidents that he had. During the course of the claimant's employment, he had various citations that were ultimately dismissed for matters such as failing to yield. The claimant also had been previously issued warnings from law enforcement for excess speed in Nebraska on January 8, 2014 (Claimant's Exhibit A-1) and in Georgia on April 15, 2014 (Claimant's Exhibit A-2).

As a result of the claimant's probationary status, the employer took into account the claimant's failure to report trailer damage, along with confirmation of the claimant's speed of 99 miles per hour while operating an employer's vehicle, and discharged him for failure to operate the employer's vehicle safely and in accordance with its policies.

#### **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 § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Professional drivers, especially those that drive large and heavy vehicles, reasonably have a higher standard of care required in the performance of their job duties to ensure public safety. That duty is evident by special licensing requirements. In this case, the claimant operated a vehicle that could weigh up to 80,000 pounds, and was discharged after his repeated failure to operate the employer's vehicle safely and in accordance with its policies.

The claimant was made aware his job was in jeopardy when placed on probation in May 2014. Both the employer and the claimant's daughter, who listened in on the phone conversation with her father, recognized the probationary period was for one year, and not contingent on the dismissal of pending citations. The claimant had previously operated the employer's vehicle at excess speeds, as evidenced by prior speeding warnings issued by law enforcement. His incident of excessive speed in Virginia, was therefore, not an isolated instance of poor judgment.

The nature of over-the-road truck driving is that drivers do not drive the same or dedicated routes each time. This does not excuse a driver from operating reasonable care or preparing for the road conditions which he may encounter, especially in light of the weight and size of vehicle that Mr. Simpson was operating, which could be deadly when operated incorrectly or unsafely. The claimant was aware of potential steep grades and poor signage as a result of talking with Tony about the route. With that knowledge, he did not exercise proper care and caution when approaching the hilly terrain in Virginia. Had he done so, his vehicle would not have reached speeds in excess of 95 or 99 miles per hour. Either speed was excessive, not only based on local law but also in light of the type of vehicle he was operating.

The employer is charged under both federal and state law with protecting the safety of its employees and the general public. It has presented substantial and credible evidence that claimant was acting against the best interests of the employer and the safety of the general public by driving too fast when his vehicle reached speed of 95 miles per hour, given his knowledge of his load and of possible steep grades, and in light of prior warnings about the route from his co-worker. His failure to report trailer damage was further evidence of the claimant's disregard for employer policies. The claimant's history, combined with the final two incidents involving the trailer and excessive speed, while on probation, is evidence of negligence or carelessness to such a degree of recurrence as to rise to the level of disqualifying job-related misconduct. See Iowa Admin. Code r. 871-24.32(1)a. The employer discharged the claimant for reasons amounting to work-connected misconduct. Benefits are denied.

**DECISION:**

The February 13, 2015 (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.

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Jennifer L. Coe  
Administrative Law Judge

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Decision Dated and Mailed

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