

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK E WHITE
Claimant

APPEAL NO. 06A-UI-10510-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HUTCHISON INC
Employer

**OC: 09/10/06 R: 04
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Hutchison, Inc. filed an appeal from a representative's decision dated October 20, 2006, reference 01, which held that no disqualification would be imposed regarding Mark White's separation from employment. After due notice was issued, a hearing was held by telephone on November 13, 2006. Mr. White participated personally. The employer participated by Val Leibold, Chief Financial Officer. Exhibits One through Ten were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. White was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. White was employed by Hutchison, Inc. from April of 2000 until September 12, 2006 as an over-the-road driver. He was discharged as the result of two accidents involving the employer's vehicle.

On February 22, 2006, Mr. White had his first accident while employed by Hutchison, Inc. He was going around a corner at approximately 45 to 50 miles per hour when he reached down to get something from the floorboard. His right tires went onto the shoulder and the vehicle started to veer off the shoulder. Mr. White overcorrected by steering left, causing the vehicle to go into a ditch on the left. He struck a cement culvert and a tree and the vehicle wound up rolled onto the passenger side. The Kansas Highway Patrol cited Mr. White for failure to maintain his lane left of center and for a log book violation.

On September 5, 2006, Mr. White was involved in a second accident as he was making a right turn onto a two-lane road. He turned wide to complete the turn and the rear tires went onto the new gravel shoulder. Because of recent rain, the shoulder was soft and gave way under the weight of the vehicle. As a result, the trailer flipped onto its side while the tractor remained upright. There was damage to a nearby church sign but Mr. White did not report it. The

employer did not learn of the sign damage until contacted by the church on or after September 13, 2006. Mr. White was notified of his discharge on September 12, 2006. The two accidents constituted the sole reason for the discharge.

REASONING AND CONCLUSIONS OF LAW:

Mr. White was discharged from employment. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. White was discharged because he had two accidents while driving the employer's vehicle. He was at fault in the February accident because he took his eyes off the road. He was going around a corner in an unfamiliar area. Whatever he bent to pick up, it does not appear that its falling created an emergency situation that required him to pick it up at that point in time. Mr. White was negligent on this occasion.

The administrative law judge concludes that Mr. White was not at fault with respect to the September 5 incident. He turned wide in order to complete his right-hand turn. This does not appear to be out of the ordinary for tractor-trailer rigs. Mr. White had no way of predicting that the shoulder would give way under the weight of the vehicle. The accident occurred in spite of the fact that he was using due care in operating the vehicle. Because Mr. White was not at fault in the final incident, it did not constitute an act of misconduct. Although past acts of misconduct may be considered in determining the magnitude of a current act, there must be a current act of misconduct to support a disqualification from benefits. 871 IAC 24.32(8).

Even if the administrative law judge were to conclude that Mr. White was at fault in the September accident, his actions would only constitute negligence. There was no evidence that he was driving recklessly or under the influence of drugs or alcohol. At most, he may have been negligent in turning too wide. Negligence constitutes disqualifying misconduct only if it is so recurrent as to manifest a substantial disregard of the employer's interests or standards. Mr. White was employed by Hutchison, Inc. for over six years and was accident-free for almost six years. The administrative law judge does not consider two accidents over six years to be so recurrent as to amount to misconduct within the meaning of the law.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that the employer has failed to sustain its burden of proving misconduct. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated October 20, 2006, reference 01, is hereby affirmed. Mr. White was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs