

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EDWARD G MCKENZIE
Claimant

APPEAL NO. 09A-UI-08215-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST SIDE TRANSPORT INC
Employer

OC: 04/19/09
Claimant: Appellant (2)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Edward McKenzie filed an appeal from a representative's decision dated May 28, 2009, reference 01, which denied benefits based on his separation from West Side Transport, Inc. After due notice was issued, a hearing was held by telephone on June 24, 2009. Mr. McKenzie participated personally. The employer did not respond to the notice of hearing.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. McKenzie was employed by West Side Transport, Inc. from July 27, 2008 until April 17, 2009 as an over-the-road driver. He was discharged because he had three late deliveries during a six-month period.

The specifics of Mr. McKenzie's first late delivery are unknown. His second late delivery was approximately one month before his separation. He had to drive through a snow storm to get to his destination and arrived late. The final incident occurred because he was stopped by the Department of Transportation (DOT) for a routine inspection. The employer has a written work rule, of which Mr. McKenzie was aware, that provides for discharge if a driver has three late deliveries within any six-month period. Mr. McKenzie was notified of his discharge on April 17, 2009.

REASONING AND CONCLUSIONS OF LAW:

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). It was incumbent upon the employer to provide specific details

concerning the reason for discharge as mere allegations of misconduct are not sufficient to result in disqualification from benefits. See 871 IAC 21.32(4).

The employer did not participate in the hearing to provide details concerning any late deliveries made by Mr. McKenzie. The testimony established that the final two late deliveries were due to matters beyond his control. On one occasion, a snow storm prevented him from making a timely delivery and on another occasion, a routine DOT stop prevented him from arriving on time. The evidence failed to establish that the loads were late because Mr. McKenzie was late in picking them up or that he was delayed by driving out of his route. In short, the evidence failed to establish that he was culpable with respect to any of the late deliveries that prompted his discharge.

For the reasons stated herein, the administrative law judge concludes that the employer has failed to establish deliberate and intentional misconduct. While the employer may have had good cause to discharge Mr. McKenzie, 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 App. 1983). Benefits are allowed.

DECISION:

The representative's decision dated May 28, 2009, reference 01, is hereby reversed. Mr. McKenzie was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css