

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK R ANICH
Claimant

APPEAL NO. 10A-UI-12439-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

G T L TRANSPORTATION INC
Employer

OC: 07/11/10
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

G.T.L. Transportation (employer) appealed a representative's August 26, 2010 decision (reference 02) that concluded Mark Anich (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 29, 2010. The claimant participated personally. The employer participated by Brian George, General Manager.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 1, 2007, as a full-time over-the-road truck driver. The claimant was previously employed from May 23, 2005, to March 31, 2006. He was separated from employment for habitually violating safety rules. The employer agreed to rehire the claimant if he did not acquire any more violations for one year and the insurance company agreed to insure the claimant.

The claimant had a conviction on December 10, 2007, for following too closely. On March 6, 2008, and February 10, 2009, the claimant had convictions for speeding. On October 13, 2009, the claimant was convicted of an improper lane change. The employer reviewed the claimant's driving record in December 2009, and warned the claimant that if he had further safety violations he could be in jeopardy of losing his job. The claimant had no further violations.

In June 2010, the employer's insurance company reviewed the employer's policy and saw the claimant's earlier violations. The insurance company told the employer that the claimant was uninsurable as of July 1, 2010. The employer terminated the claimant on June 28, 2010. The employer would have continued to employ the claimant had he been insurable.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The employer was not able to provide any evidence of a final incident of misconduct that occurred near the time of the termination. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

DECISION:

The representative's August 26, 2010 decision (reference 02) is affirmed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs