

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

JERRY D KRUSEMARK  
255 - 7<sup>TH</sup> ST  
JESUP IA 50648

ADM TRUCKING INC  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-04440-SWT  
OC: 03/13/05 R: 03  
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the *Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.*

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated April 13, 2005, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on May 18, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing. Ray Neff participated in the hearing on behalf of the employer. Exhibits One through Five were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time for the employer as a truck driver from April 6, 1996 to March 4, 2005. The claimant was informed and understood that under the employer's work rules, drivers were required to obey the posted speed limits.

The claimant had been warned in 2000 and 2001 for exceeding the posted speed limit. On September 14, 2004, the claimant injured his foot while climbing on his truck to squeegee off the windows, which was considered unsafe behavior. On September 15, 2004, he received a final written notice and probation as a result of this unsafe conduct.

On September 30, 2004, negligently failed to disconnect the Scully system before pulling his truck away from the load-out area. As a result of his actions, the Scully system was damaged. On October 8, 2004, the claimant received a written warning for having the negligent accident on September 30. The employer has a system within the trucks that monitors the truck's speed. The claimant was counseled for exceeding the employer's speed guidelines in early February 2005.

On March 3, 2005, the claimant was driving through the town of Bentonville, Arkansas. The posted speed limit was 45 miles per hour. A sheriff's deputy stopped the claimant because he was driving 60 miles per hour. He received a traffic citation for speeding. When the claimant's supervisor questioned the claimant, the claimant admitted that he knew he was exceeding the posted speed limit but felt the speed was not excessive considering the road conditions and time of day.

The employer discharged the claimant for violating the company's safety policy by not following the posted speed limit. The claimant's disciplinary record was considered when the decision was made to discharge him.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant, especially considering the claimant's past disciplinary record. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated April 13, 2005, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

saw/sc