

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MERT MARTIN
Claimant

APPEAL NO: 14A-UI-12107-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

BURLINGTON STAGE LINES LTD
Employer

OC: 11/02/14
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 20, 2014, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 12, 2015 and concluded on January 13, 2015. The claimant participated in the hearing. Jay Hausenstein, Driver Trainer/Supervisor and Ashley DeJesus, Human Resources Generalist, participated in the hearing on behalf of the employer. Both parties submitted the same DVR recording for consideration as an exhibit. The administrative law judge received the claimant's copy first and consequently marks the recording as Claimant's Exhibit A.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time motor coach operator for Burlington Stage Lines from February 6, 2013 to November 6, 2014. He was discharged for blatant violations of traffic laws and the employer's policies.

The claimant's route left Davenport at 4:00 p.m. and went to Indianapolis, Indiana, arriving at 11:30 p.m. The following day he left Indianapolis at 11:00 a.m. and arrived in Davenport at 7:00 p.m. On November 1, 2014, the employer received a complaint from a concerned citizen from Champagne, Illinois, which was on the claimant's line, stating the claimant ran a red light at Main and Walnut.

Upon receipt of a complaint about a driver the employer's policy dictates it pulls the safety vision tape in the bus driven by the driver in question and tries to observe the violation complained of. The safety vision tape records audio and video inside the bus and there is also a camera mounted outside the bus so the employer can see what the driver sees as well as the markings on the pavement. The system also shows when a driver brakes.

The employer had the head dispatcher/driver supervisor; general manager; vice-president of line runs; director of safety; and the driver trainer supervisor; view the video of the incidents in question. The recording showed the claimant approaching railroad tracks on the edge of Champagne. The claimant put his four-way lights on and slowed down but did not come to a complete stop as required. The same thing happened when the claimant crossed railroad tracks going out of town. The employer then went back to check the last railroad tracks he crossed, which were in Galesburg, Illinois, and the claimant also put his four-way lights on and slowed down but did not come to a complete stop.

In reviewing the video the employer also noted the claimant failed to stop at two red lights in Champagne and did not brake or make any attempt to stop. The employer also observed the claimant start a left hand turn after the light had turned yellow and proceed through the intersection when the light turned red. There were pedestrians starting to cross the street with the green light when the claimant came around the corner and honked at the people who had already stepped in to the street in an attempt to cross. The light was considered a "stale green light" as it had been green for an amount of time that it should alert the driver it would turn yellow at any second. In those situations the employer requires drivers to "cover the brake" and be ready to stop.

The claimant has held a commercial driver's license (CDL) since 1998. He was required to take the CDL test again in 2005. The five management employees who viewed the video of that portion of the claimant's crossing railroad tracks in Galesburg and Champagne, running two red lights and making a left hand turn on a yellow then red light, concluded his violations were blatant and there were too many in one evening to warrant a lesser penalty than termination of employment. The employer called the claimant and told him there was a complaint about his driving and asked him to come in November 6, 2014. During that meeting the employer showed the claimant the video and the claimant stated he could be retrained and learn from his mistakes. He did not deny his actions during the termination meeting.

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).

While the claimant argues he was not trained to stop at railroad crossings, when a driver takes his CDL driving test and does not come to a complete stop at the crossing he automatically fails the test. The employer also covers stopping at all railroad tracks at the time of hire and when it reviews the Federal Motor Carriers Safety Regulation book and then has the drivers take a quiz, including a question about stopping at railroad tracks. The claimant is responsible for the information contained in the Federal Motor Carriers Safety Regulation book. As a holder of a CDL, and an experienced driver, the claimant's testimony that he was unaware of that law is not persuasive.

The claimant also maintains he did not stop at the red lights because he is the only person on the bus provided with a seatbelt and he was protecting passengers and property by not slowing too quickly or stopping suddenly. The video, however, clearly shows the lights were red when the claimant came to the intersections and that occurred after those lights had turned yellow. The claimant concedes the light was yellow when he made the left hand turn where pedestrians had started into the street and he was forced to honk at them to prevent them from being struck by the bus but stated he made a last second decision to go through the yellow light. Although not a good decision, the left hand turn on a yellow light is the least serious of his errors the evening of November 1, 2014.

As a bus driver with a CDL, the claimant has a heightened duty to drive safely in order to protect his passengers, other motorists on the road and pedestrians. The bus the claimant was driving is 45 feet long and weighs approximately 38,000 pounds. It was his responsibility to drive with extreme caution and to obey the rules of the road. Instead, the claimant failed to stop at three railroad crossings, ran two red lights, and went through a yellow light that showed questionable judgment at best.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The November 20, 2014, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs