

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CORY A TESCH
Claimant

APPEAL NO. 11A-UI-10806-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

C H WILSON TRANSPORT INC
Employer

**OC: 07/17/11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Cory A. Tesch (claimant) appealed a representative's August 10, 2011 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from C. H. Wilson Transport, Inc. (employer). After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on September 8, 2011. The claimant participated in the hearing. Dennis Rippenstrop appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on May 19, 2010. He worked full-time as regional driver. His last day of work was July 18, 2011. The employer discharged him on that date. The stated reason for the discharge was having an accident while exceeding the applicable speed limit after prior warnings for speed.

The employer has had past safety problems with the DOT regulators; as a result, in an attempt to improve its standing, the employer was strictly enforcing safety protocols with its drivers. The employer's GPS system was set to trigger a notification whenever a driver exceeded 72 miles per hour. In October 2010 the business owner sent the claimant an email warning him of his excessive speed. On April 27, 2011, the employer's GPS system indicated there were 18 occurrences that day where the claimant had exceeded 72 miles per hour, and the claimant was spoken to by his dispatcher. A few days later Mr. Rippenstrop, vice president and safety director, personally spoke to the claimant and told him that the speeding "had to stop."

On July 18 the claimant was driving a tanker loaded with hot oil for asphalt. The DOT regulations require that on curves or corners tankers must be driven at speeds at least ten miles per hour below the speeds posted for other vehicles. The claimant was driving south on Interstate 35. When he reached Interstate 80, he took the ramp to merge onto Interstate 80 heading west. The ramp curves to the right from Interstate 35 to Interstate 80. The speed limit on the curve is either 60 or 65 miles per hour. While on the ramp, the claimant lost control of his truck, and it rolled into the ditch. He was given a traffic citation for failure to maintain control. He advised the employer that the accident happened while he was reaching down for his cell phone which had fallen onto the floor of the truck. The employer checked the claimant's GPS reading at the point of the accident and found he had been going 68 miles per hour. Given that he was on a curve, under the DOT provision for tankers, he should have been going no more than 55 miles per hour. As a result, the employer discharged the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The gravity of the incident and the number of prior violations and prior warnings are factors considered when analyzing misconduct.

The claimant's accident while exceeding the speed at which he should have been driving after prior warnings for speeding shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's August 10, 2011 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of July 18, 2011. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw