

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRISTOPHER J LANG**  
Claimant

**APPEAL NO. 09A-UI-11745-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ART PAPE TRANSFER INC**  
Employer

**Original Claim: 12-21-08  
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the August 12, 2009, reference 04, decision that denied benefits. After due notice was issued, a hearing was held on August 31, 2009. The claimant did participate. The employer did participate through Tom Cloos, Safety Director.

**ISSUE:**

Was the claimant discharged for work-related misconduct?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: The claimant was employed as a truck driver, full-time, beginning January 7, 2009, through July 20, 2009, when he was discharged.

On July 13, 2009, a motorist called in to complain that the claimant was tailgating him and driving over the speed limit while on Highway 30. The motorist provided his name and telephone number to the employer so that if they needed any additional information, they could call him.

The employer had received a similar call from another motorist earlier in the claimant's employment on February 19, 2009, who complained of the exact same behavior, that the claimant was tailgating and driving too fast while in Illinois. The claimant was written up for the earlier incident and was told that he was not to tailgate and that one more complaint would lead to his discharge. The claimant told the employer during the first write up that he was appreciative of the second chance.

**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.

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.

The administrative law judge, like the employer, is persuaded that the claimant was speeding and tailgating, which led to the other motorist complaining to the employer. It is just not credible that a motorist would go to the trouble to call and complain about a truck driver doing nothing wrong, especially when they provide their name and telephone number. The claimant had also had a similar complaint by a different motorist in another state for the same behavior; tailgating and speeding. The claimant knew that he was not to tailgate. The administrative law judge is not persuaded that the claimant was discharged over the issue of wages, as the wages can be pursued even after the employment ended. Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). It was reasonable for the employer to require the claimant not to tailgate while driving his truck. The employer received two complaints within six months from members of the general public that the claimant was doing so. Misconduct has been established and benefits are denied.

**DECISION:**

The August 12, 2009, reference 04, 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.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/kjw