

STATE OF WISCONSIN
LABOR AND INDUSTRY REVIEW COMMISSION
P O BOX 8126, MADISON, WI 53708-8126 (608/266-9850)

KENNETH W KOSTROVA, Employee

UNEMPLOYMENT INSURANCE
DECISION

Hearing No. 99402211AP

TOM JOY & SON INC, Employer

**SEE ENCLOSURE AS TO TIME
LIMIT AND PROCEDURES ON
FURTHER APPEAL**

An administrative law judge (ALJ) for the Division of Unemployment Insurance of the Department of Workforce Development issued a decision in this matter. A timely petition for review was filed.

The commission has considered the petition and the positions of the parties, and it has reviewed the evidence submitted to the ALJ. Based on its review, the commission agrees with the decision of the ALJ, and it adopts the findings and conclusion in that decision as its own.

DECISION


The decision of the administrative law judge is affirmed. Accordingly, the employee is eligible for benefits beginning in week 38 of 1999, if otherwise qualified.

Dated and mailed

JAN 3 2000

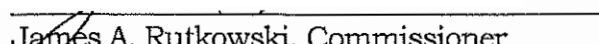
kostrle.usd:105:2

/s/


David B. Falstad, Chairman

Pamela I. Anderson, Commissioner

/s/


James A. Rutkowski, Commissioner

MEMORANDUM OPINION

The commission has affirmed the appeal tribunal decision in this case, because it fully agrees with the administrative law judge's conclusion of no misconduct. The employer first asserts that the employee had ample notice that traffic was slowing. This is true, but it is not as if the employee should have simply pulled over to the side of the road and stopped his rig completely. Traffic was still moving, and the employee undoubtedly was supposed to keep moving as well. The employer's policy is that preventable accidents involving injury or death to another person where the driver is found grossly negligent, will be grounds for discharge. The record in this case contains no finding of gross negligence by the employee. Such could be shown by a legal citation, for example, but the employee received no citation for the accident. While it may be true that the state of Georgia has a history of not writing many citations, one still would expect a driver who was grossly negligent to receive some kind of citation for an accident as serious as the employer makes the September 11, 1999 accident out to be.

The most important consideration is one the administrative law judge did not even reach. Although it is not a hard and fast rule, yet there is an industry standard in the trucking industry, for the number of accidents which will lead to a discharge for misconduct. That is three preventable accidents in a year's time. The employee also did not come close to this standard.

For these reasons, and those stated in the appeal tribunal decision, the commission has affirmed that decision.