

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRY L HARKER
Claimant

APPEAL NO. 08A-UI-09375-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KEY CITY TRANSPORT INC
Employer

**OC: 10/28/07 R: 12
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated October 8, 2008, reference 05, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on October 29, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Joe Bitter participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a truck driver from August 4 to September 4, 2008. He was informed and understood that he was not allowed to use his truck for personal business without authorization, was not to have alcoholic beverages in the truck, and was required to report any accidents with the truck. Joe Bitter is the owner of the company.

On the evening of September 4, 2008, the claimant used his truck for personal business without authorization by driving the truck to Dollar General to get some toiletries and food. While leaving the parking lot, he negligently ran over a large concrete pillar that pierced the fuel tank. He noticed the tank was leaking diesel fuel and panicked when he could not stop it. He knew that he was in trouble and wanted to fix the leak without notifying the owner so he would not lose his job.

The claimant had a friend across the river in Wisconsin who he thought could help him, so he drove to his friend's house. His friend was not home, so he drove the still-leaking truck back to Dubuque and parked it at a truck stop. He went into the truck stop and had a beer before going back to his truck. A short time later, he heard a knock on the truck door, and a woman carrying a beer can said she needed a place to stay for the night. The claimant let her in the truck and had a couple of swigs of the beer. At some point he fell asleep.

A citizen reported a diesel fuel spill on a road in Dubuque to the police. The police followed a trail of fuel through streets in Dubuque, across the bridge to Wisconsin and back, and finally to the truck stop in Dubuque where the truck was parked. The police called Bitter and asked him to come to the truck stop.

The police took the claimant from the truck along with a woman who was in the truck with him. The open container of beer was found in the truck along with a powdery substance, which preliminarily tested positive as cocaine. When Bitter arrived, the claimant was being questioned in the back of the police car. There were several police cars present along with a fire truck with a hazardous material crew cleaning up the pool of diesel fuel surrounding the truck. A police officer explained to Bitter what they found in the truck. Bitter told the officer to tell the claimant he was fired and would not be allowed on the employer's property again.

The employer discharged the claimant for using the truck for personal business, having an open container of alcohol and drugs in the truck, causing the fuel oil leak, and failing to report the fuel spill to the employer. The claimant was charged with operating a vehicle while intoxicated but was not charged with any drug offense.

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.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's conduct 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. While the fuel leak was not due to a deliberate act, everything else—including using the vehicle for personal business, not reporting the accident, driving the vehicle while it was leaking fuel, and allowing someone in the vehicle with an open container of alcohol—was a deliberate choice. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated October 8, 2008, reference 05, 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.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw