

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ISAAC V WOODALL

Claimant

APPEAL NO. 13A-UI-02511-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BARR-NUNN TRANSPORTATION INC

Employer

OC: 01/13/13

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated February 22, 2013, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on March 28, 2013. Claimant participated. The employer participated by Mr. Dirk Pae, Team Supervisor, and Ms. Ileen Splendore, Safety/Compliance Coordinator.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Isaac Woodall began his employment with Barr-Nunn Transportation, Inc. on January 31, 2012. Mr. Woodall was employed as a full-time over-the-road tractor/trailer driver and was paid by the mile. His immediate supervisor was Samantha Reinsch. Mr. Woodall was discharged on January 17, 2013.

The claimant was discharged for a service failure that took place on January 16, 2013. Mr. Woodall was dispatched to deliver a load in Page, South Carolina at or before 11:59 p.m. on January 16, 2013. The claimant had been dispatched with sufficient time to cover the distance involved and was aware of the expected delivery time at the delivery location. Mr. Woodall stopped in Charlotte, North Carolina en route. Because the claimant took excessive time off the truck at home for personal reasons, he was unable to successfully deliver the load at its expected time at 11:59 p.m. that night. Mr. Woodall did not deliver the load until 4:00 a.m. on the morning of January 17, 2013 and the employer reasonably concluded that the claimant's service failure was caused by the claimant's own actions. Mr. Woodall had been dispatched for a second load while en route to the Page, South Carolina location. Mr. Woodall was aware that if the second load in any way impacted his ability to deliver the first load, the first load should be given priority and the company should be contacted so another driver could be assigned to the second load. The claimant did not do so.

Because Mr. Woodall was on his third disciplinary probation period for repeated service failures, he was discharged from employment.

Mr. Woodall and other drivers were informed of disciplinary actions and disciplinary probation periods by three separate and distinct methods all utilized by the company and utilized in Mr. Woodall's case. The claimant was notified by mail, by telephone and by Qual-Com communication of each of his disciplinary probationary periods including the last.

It is the claimant's position that the service failure was "not his fault" and caused by a second dispatch.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

Iowa Code section 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 employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits.

The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

The evidence in the record establishes the claimant was given sufficient time to deliver the load that was due to be delivered by 11:59 p.m. on January 16, 2013 but the claimant again had a service failure because he chose to stop at his residence and spend excessive time off the truck causing him to be unable to deliver the load as directed. The claimant had received previous warnings and was on disciplinary probation at the time of his most recent service failure. As the claimant had no reasonable explanation for his service failure except for his own fault, a decision was made to terminate Mr. Woodall from his employment.

The administrative law judge, having reviewed the evidence in the record, concludes that the employer has sustained its burden of proof in showing intentional, disqualifying misconduct on the part of the claimant. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated February 22, 2013, reference 01, is affirmed. The claimant was discharged for misconduct. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs