

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEVIN D FULTZ

Claimant

APPEAL NO. 07A-UI-06729-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BARR-NUNN TRANSPORTATION INC

Employer

**OC: 06/17/07 R: 12
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated July 3, 2007, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on July 26, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Aimee Hanson 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 an over-the-road truck driver from July 29, 2005, to June 7, 2007. He was informed and understood that under the employer's work rules, drivers were required to notify the safety department regarding any traffic tickets received and submit a copy of the ticket to the employer. Under the employer's hiring criteria, drivers cannot be hired if they have a speeding ticket for exceeding the speed limit by 15 miles per hour or over. The employer also has a policy of discharging drivers if they receive a speeding ticket after they are hired for exceeding the speed limit by 15 miles per hour, but this policy is not in writing.

On April 21, 2006, the claimant received a speeding ticket for driving 15 mph over the speed limit. He reported the ticket to the safety department and submitted a copy of the ticket to the employer. When he talked to the person in the safety department about the ticket, he was told not to worry about the ticket because the policy applied to speeding tickets for 20 miles per hour or more over the speed limit.

The claimant continued to work for the employer after April 21, 2006. A review of the claimant's driving record on May 30, 2006, did not disclose the speeding ticket. When the safety department conducted a review of the claimant's driving record in June 2007, the ticket for driving 15 miles per hour over the speed limit was discovered.

On June 7, 2007, the employer discharged the claimant for receiving the ticket on April 21, 2006; and because the employer believed the claimant had not reported the ticket previously.

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.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant testified very credibly and in detail regarding promptly reporting the speeding ticket to the safety department. The claimant's testimony

outweighs the employer's evidence. While the employer may have been justified in discharging the claimant, no current act of work-connected misconduct as defined by the unemployment insurance law has been established.

DECISION:

The unemployment insurance decision dated July 3, 2007, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs