

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT L MARSHALL
Claimant

APPEAL NO: 10A-UI-02285-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

BARR-NUNN TRANSPORTATION INC
Employer

**OC: 01/10/10
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge
871 IAC 24.32(1) – Definition of Misconduct
871 IAC 24.32(8) – Current Act

STATEMENT OF THE CASE:

The claimant appealed a department decision dated February 2, 2010, reference 01, that held he was discharged for misconduct on January 13, 2010, and benefits are denied. A telephone hearing was held on March 24, 2010. The claimant participated. The employer did not participate. Official notice was taken of the claimant appeal documents.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witness, and having considered the evidence in the record, finds: The claimant began employment as a full-time driver on August 3, 1994, and last worked for the employer on January 13, 2010. The employer discharged the claimant for traffic citations incurred within the last four years of employment.

The most recent citation was for speeding in company truck on October 15, 2009. The claimant was cited for an improper turn while driving his personal vehicle on July 8, 2009. Although the employer considered a citation for improper turn dated April 30, 2008, it was changed by the state of Illinois to a headlamp citation. Although the employer believes there is a citation for speeding on April 9, 2008, the Iowa DOT record shows no such conviction and the claimant believes it may have been a warning for speed, not a conviction.

The employer failed to respond to the notice to participate in this hearing.

REASONING AND CONCLUSIONS OF 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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The administrative law judge concludes the employer has failed to establish the claimant was discharged for misconduct or any current act of misconduct in connection with employment on January 13, 2010, for violation of company policy.

The employer failed to participate in this matter and offer the policy it relies upon for discharge. The evidence shows there are only two citations for moving violations involving a company truck, and the most recent is October 15, 2009. The improper turn in a personal vehicle is not related to employment, and the Illinois citation was reduced from a moving violation to a mechanical issue. The record does not show the policy standard, how the claimant may have violated it, and the most recent incident is not current as to the date of discharge.

DECISION:

The department decision dated February 2, 2010, reference 01, is reversed. The claimant was not discharged for misconduct on January 10, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css