

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**COLE D MARLOW  
503 MINNESOTA ST  
BURT IA 50522-5002**

**KOSSUTH COUNTY  
ATTN AUDITOR  
114 W STATE ST  
ALGONA IA 50511-2643**

**Appeal Number: 06A-UI-03766-RT  
OC: 03/12/06 R: 02  
Claimant: Appellant (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Cole D. Marlow, filed a timely appeal from an unemployment insurance decision dated March 29, 2006, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on April 24, 2006, with the claimant not participating. Although the claimant had called in a telephone number where he purportedly could be reached for the hearing, when the administrative law judge twice tried to call that number at 3:04 p.m. and 3:06 p.m., he reached a voicemail for the number he had dialed which was the number the claimant had provided and also the number in Workforce Development records. The administrative law judge left messages both times that he was going to proceed with the hearing and if the claimant wanted to participate in the hearing he would need to call before the hearing was over and the record was closed. The hearing began when the record

was open at 3:09 p.m. and ended when the record was closed at 3:23 p.m. and the claimant had not called during that time. Patricia Casey, Office Manager for the Kossuth County Engineer and Richard Schiek, Kossuth County Engineer, participated in the hearing for the employer, Kossuth County. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time landfill operator from February 1, 1998, until he was discharged on March 10, 2006. The claimant was discharged when he lost his commercial drivers license (CDL), class A, on or about March 10, 2006 when he was charged with operating a motor vehicle while intoxicated (OWI). The claimant's job required that he haul recycling materials in a tandem truck from Burt, Iowa, to Algona and back to Burt and from Burt, Iowa, to Emmetsburg and back as well as operate various landfill equipment. When the claimant was first hired he knew that a CDL was required and that it was required throughout his employment. Each year the employer checks the license of all employees required to have a CDL and makes a photocopy. When a new law was passed providing for the loss of a CDL for one year upon a conviction of OWI, even if off the job, the employer sent a newsletter to all employees reaffirming their need to have a CDL. This occurred in 2004. The claimant's OWI was totally unrelated to his employment. The employer also requires that employees be insurable and the claimant lost his insurability as a result of the OWI charge. In November of 2001, the claimant signed a handbook providing notice that he must be in compliance with all employer's rules and maintain all licenses and certificates required by the employer and to remain insurable.

#### REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer's witnesses credibly testified, and the administrative law judge concludes, that the claimant was discharged on March 10, 2006. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The employer's witnesses credibly testified that the claimant lost his commercial drivers license (CDL), class A, on or about March 10, 2006 and that this license was and always had been required for his job. The evidence establishes that as part of the claimant's job he had to haul recycling materials using a tandem truck which required a CDL. He drove that truck from Burt, Iowa, to Algona and back to Burt and from Burt, Iowa, to Emmetsburg and back to Burt. The claimant also had to operate landfill equipment occasionally. Finally, the claimant had to maintain his insurability. The claimant lost the ability to operate the tandem truck and the landfill equipment and his insurability when he was charged with OWI on or about March 10, 2006 and lost his CDL license. Throughout his employment the claimant was fully aware that he needed to maintain a CDL. The claimant signed a handbook in November of 2001 stating that he knew he must be in compliance with the employer's rules and maintain all licenses and certificates and be insurable. Every year the employer checked all of the employees required to have a CDL to insure that they had such a license. When a new law was passed in 2004 the employer sent a newsletter to employees reminding them that they needed to have a CDL. The administrative law judge concludes that the claimant was completely aware that he needed to have a CDL and that he lost it pursuant to a criminal charge for operating a motor vehicle while intoxicated (OWI) which charge was totally unrelated to his employment. The administrative law judge concludes that this charge was a deliberate act constituting a material breach of his duties and obligations arising out of his worker's contract of employment and evinces a willful or wanton disregard of the employer's interests and, at the very least, is carelessness or negligence in such a degree of recurrence, all as to establish disqualifying misconduct.

In Cook v. Iowa Department of Job Service, 299 N.W.2d 698 (Iowa 1980), the Iowa Supreme Court denied unemployment insurance benefits to an employee truck driver who was discharged because his repeated traffic violations rendered him uninsurable and thus unemployable even though he received most of his driving citations during non-work hours and in his personal car. The court ruled that all such citations bore directly on his ability to work for the employer and that the claimant was aware of this. The claimant did not claim that anyone forced him to violate the laws of the road. That is the situation here. Cook is distinguishable

from Fairfield Toyota, Inc. v. Bruegge, 449 N.W.2d 395 (Iowa App. 1989), where the Iowa Court of Appeals ruled otherwise because in that case, after the claimant was made known that his driving record was a problem he had no further driving problems. Here, the claimant knew from his date of hire that he needed the CDL and was reminded of that yearly when the employer checked and further reminded of that in a newsletter in 2004 and further when he signed a handbook acknowledgement in November of 2001.

In summary, and for all the reasons set out above, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until, or unless, he requalifies for such benefits.

**DECISION:**

The representative's decision of March 29, 2006, reference 01, is affirmed. The claimant, Cole D. Marlow, is not entitled to receive unemployment insurance benefits, until, or unless, he requalifies for such benefits, because he was discharged for disqualifying misconduct.

cs/pjs