

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DEON BARNES**

Claimant

**APPEAL NO. 10A-UI-14685-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAXLER TRANSPORTATION**

Employer

**OC: 08-29-10**

**Claimant: Appellant (2)**

Section 96.5-2-a –Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the October 18, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 15, 2010. The claimant participated in the hearing with wife Bobbie Barnes and Agent Victoria Schneider, Parole Officer. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Claimant's Exhibit A was admitted into evidence.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time first mate/deck hand for Waxler Transportation from June 15, 2008 to August 20, 2010. He worked 30 to 33 days in a row and was off for approximately 13 days after that. The claimant was scheduled to return to work August 19, 2010, and he had to leave from the levee on the Mississippi River. As he was waiting, he looked through his bag and realized he did not have his travel permit. The claimant is on parole and cannot leave the state of Illinois without the travel permit, which provides information about what rivers he will be on and it includes the parole officer's permission to leave the state. He left the levee to go home and get his travel permit but when he returned, the van had already left without him. The claimant called the crew van and was told it could not turn around to get him. He called the office and the crew dispatcher was not available. He called the next day and was told he had to speak to the manager of operations, who told him he was going to be terminated. The termination letter was dated September 3, 2010.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 claimant was discharged after he was not ready and waiting at the designated pickup site August 19, 2010, to return to work. However, he had a legitimate reason for leaving the pickup site and going home, since he could have been arrested if he left the state without his required travel permit. The claimant should not be penalized for forgetting his travel permit on one occasion and going back to get it so he was in compliance with the law. The employer has not met its burden of proving disqualifying job misconduct as defined by Iowa law. Therefore, benefits are allowed.

**DECISION:**

The October 18, 2010, reference 01, decision is reversed. The claimant was discharged for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/kjw