

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PATRICK J MCNALLY**  
Claimant

**APPEAL NO: 09A-UI-14720-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ELLIOT BROS TRUCK LINE INC**  
Employer

**OC: 08/16/09**  
**Claimant: Respondent (1)**

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 employer appealed a department decision dated September 25, 2009, reference 02, that held the claimant was not discharged for misconduct on August 14, 2009, and benefits are allowed. A telephone hearing was held on October 29, 2009. The claimant participated. Kathy Barber, Safety Manager, participated for the employer.

**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 witnesses, and having considered the evidence in the record, finds: The claimant began employment as a full-time commercial driver on July 31, 2009, and last worked for the employer on August 14, 2009. The employer discharged the claimant when an employment reference check on August 14 revealed that he had a positive drug test while working for a previous employer. When claimant applied for employment, he was not asked about the positive test, and he provided no false information to hide it. The claimant had a valid CDL license at the time of hire, and he had received no official notice that he is required to participate in evaluation and rehabilitation in order to drive commercially for any employer.

**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.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for any current act of misconduct in connection with employment on August 14, 2009.

The employer elected to hire and employ the claimant about two weeks when a former employer reference check revealed a positive drug test. The claimant provided no false information about the test nor did he try to hide it at the time of employment application. While the employer may have a justifiable reason for discharge, there is no job disqualifying misconduct.

**DECISION:**

The department decision dated September 25, 2009, reference 02, is affirmed. The claimant was not discharged for misconduct on August 14, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs