

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL K JOHNSON**  
Claimant

**APPEAL NO: 12A-UI-10838-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DOHRN TRANSFER COMPANY**  
Employer

**OC: 07/29/12  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct  
Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated August 27, 2012, reference 01, that held he was discharged for misconduct on August 16, 2012, and benefits are denied. A telephone hearing was held on October 2, 2012. The claimant participated. The employer did not participate.

**ISSUES:**

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

Whether claimant is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds: The claimant began employment as a full-time local delivery driver on August 13, 2001, and last worked for the employer on August 16, 2012. The claimant knew he was required to have a CDL as a condition of employment. The claimant was charged with a DUI while driving a personal vehicle on July 24, 2012. He tested over the legal limit, and his regular license was taken. He was issued a ten-day permit to drive.

Claimant notified the employer of his DUI arrest and he was given a verbal suspension from employment pending corporate office review. On August 7 the employer HR director advised claimant he was terminated for the “disqualifying offense” and a certified letter was mailed to him that he later received on August 16. When the ten-day driving permit expired, claimant had not obtained a work permit to continue his driving privilege.

Although claimant does not have a driving permit (or license) as of the date of this hearing, he had previously performed dock work for the employer due to an injury back in 2010/2011. He has the ability to load and unload trucks.

The employer failed to respond to the hearing notice.

**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 established that the claimant was discharged for misconduct in connection with employment on August 16, 2012, for a disqualifying offense (DUI arrest) that caused him to lose his license to drive, because he tested over the legal limit.

The claimant knew he was required to have a CDL in order to drive for the employer. The claimant violated the employer policy and committed a disqualifying offense when he was arrested for DUI. The arrest led to a breath test that he failed and this failure is what caused him to lose his regular license. When his legal permit expired on or about August 3, he could no longer drive for the employer. His losing his license is the offense that constitutes job disqualifying misconduct, because he chose to drive while under the influence knowing this was putting his job in jeopardy. The employer is not required to find claimant another job.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The administrative law judge further concludes no availability disqualification is imposed. The claimant is able to obtain gainful employment as a dock worker.

**DECISION:**

The department decision dated August 27, 2012, reference 01, is affirmed. The claimant was discharged for misconduct on August 7, 2012. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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