

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENNETH R ARMSTRONG
Claimant

APPEAL NO: 14A-UI-04104-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALLIED SERVICES LLC
Employer

OC: 03/09/14
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Kenneth R. Armstrong (claimant) appealed a representative's April 10, 2014 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Allied Services, L.L.C. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 8, 2014. The claimant participated in the hearing. David Fratzke appeared on the employer's behalf. During the hearing, Claimant's Exhibit A was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Affirmed. Benefits denied.

FINDINGS OF FACT:

The claimant started working for the employer on April 6, 2013. He worked full time as residential driver in the employer's Bettendorf, Iowa waste hauling operation. His last day of work was February 27, 2014. The employer discharged him on February 28, 2014. The stated reason for the discharge was the impending loss of his commercial driver's license (CDL).

In the early morning hours of Thanksgiving Day, November 28, 2013, while on his own time the claimant was stopped and charged with operating a motor vehicle while intoxicated (OWI). This resulted in an immediate suspension of his driver's license, including his CDL, which was required for his job. He promptly appealed and was permitted to continue to drive pending the appeal of the OWI; he appealed the administrative license suspension as well as appealing the criminal traffic citation. He also promptly informed the employer of the situation. The employer responded that it would allow the claimant to continue working as long as the appeal process was continuing.

On February 27 the employer and the claimant learned from the DOT that the claimant's administrative appeals had been exhausted and his only other avenue on appealing the administrative suspension would be to separately go to district court to seek judicial review of the DOT agency action. However, the claimant's license and CDL would be suspended effective March 13 for one year. The employer therefore determined to immediately discharge the claimant, which it did on February 28.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

Under the definition of misconduct for purposes of unemployment benefit disqualification, the conduct in question must be "work connected." *Diggs v. Employment Appeal Board*, 478 N.W.2d 432 (Iowa App. 1991). However, the court has concluded that some off-duty conduct can have the requisite element of work connection. *Kleidosty v. Employment Appeal Board*, 482 N.W.2d 416, 418 (Iowa 1992). Under similar definitions of misconduct, it has been found:

In order for an employer to show that its employee's off-duty activities rise to the level of misconduct in connection with the employment, the employer must show by a preponderance of the evidence:

[T]hat the employee's conduct (1) had some nexus with her work; (2) resulted in some harm to the employer's interest, and (3) was in fact conduct which was (a) violative of some code of behavior impliedly contracted between employer and employee, and (b) done with intent or knowledge that the employer's interest would suffer.

Dray v. Director, 930 S.W.2d 390 (Ark. App 1996); *In re Kotrba*, 418 N.W.2d 313 (SD 1988), quoting *Nelson v. Department of Employment Security*, 655 P.2d 242 (WA 1982); 76 Am. Jur. 2d, Unemployment Compensation §§77–78. An off-duty driving offense would have a connection with a job for which driving commercial vehicles and having a valid CDL were stated job requirements. There is an obvious harm to the employer when an employee commits an act, even while off duty, that jeopardizes his ability to perform his normal job duties. In this case, the employer did not discharge the claimant because he was charged with an OWI, but rather, the employer discharged the claimant because the employer learned that the claimant would not have a CDL after March 13, 2014. Under these circumstances, the employer discharged the claimant because he would no longer hold a required CDL license because of his off-duty conduct. The fact that the employer did not wait until March 13 does not change the outcome. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's April 10, 2014 decision (reference 02) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of February 28, 2014. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css