

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JUSTIN SIMPSON**  
Claimant

**APPEAL NO. 09A-UI-03148-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RUDD SANITATION INCORPORATED**  
Employer

**Original Claim: 05-25-08  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the February 17, 2009, reference 05, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 24, 2009. The claimant participated in the hearing. Lori Prucha, Secretary; Marsha Rudd, Owner; and Brian Prucha, Shop Manager, participated in the hearing on behalf of the employer.

**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 full-time driver for Rudd Sanitation from July 28, 2008 to January 22, 2009. He was required to have a driver's license to do his job and needed a commercial driver's license (CDL) to drive the employer's truck. He drove January 15 and 16, 2009, and on January 19, 2009, he informed Shop Manager Brian Prucha he did not have a driver's license because it was suspended following a DWI approximately one month earlier. On January 22, 2009, Owner Marsha Rudd went to the DOT to get a copy of the letter saying when the claimant lost his license. She also asked the claimant when he lost it. Later that afternoon, the claimant called Mr. Prucha and said he was voluntarily quitting because he was going to have foot surgery on both feet and would be unable to work for approximately one to one and one-half years. The employer had already prepared the paperwork to terminate his employment due to not having a driver's license in violation of the employer's policy stating an employee must have a valid CDL at all times and must inform his supervisor immediately or face suspension or dismissal if his license is going to be suspended.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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 of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant lost his driver's license effective January 14, 2009, after receiving a DWI. He did not report the loss of his license to the employer until January 19, 2009. Having and maintaining a driver's license is a requirement of his job; and because of the DWI, the claimant was not able to meet that requirement. As a side note, even if the claimant prevailed on the separation issue, he is not able and available to work any job for the next year to year and one-half, according to his testimony, because of the surgeries, physical therapy, doctor's appointments and recovery time required due to the problems with his feet. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

**DECISION:**

The February 17, 2009, reference 05, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/kjw