

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT D CUMMINGS
Claimant

LINN COUNTY HUMAN RESOURCES DEPT
Employer

APPEAL NO. 07A-UI-04432-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04 -01-07 R: 03
Claimant: Appellant (1)**

Section 96 .5 (2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a representative's decision dated April 26, 2007, reference 02, which withheld unemployment insurance benefits. After due notice was issued, a hearing was held by telephone on May 16, 2007. Claimant participated personally. Employer participated through Diane Losch

ISSUE:

At issue in this matter is whether the claimant was discharged for misconduct in connection with his work.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Cummings was employed by Linn County Iowa from November 4, 2002 until March 30, 2007 when he was discharged for failing to obtain a valid CDL motor vehicle operator's permit as previously agreed on February 24, 2005. Mr. Cummings, at that time, held the position of heavy equipment operator, but lost his driving privileges because of an OWI offense and conviction. Because the possession of a valid commercial driving operator's license was necessary for the claimant to perform his duties, he was subject to discharge at that time. In an effort to accommodate the claimant, it was agreed that the claimant would be assigned to work in the bridge department pending the reinstatement of his commercial driver's license by April 1, 2007. The claimant was aware that failure to have his license reinstated by that date would result in his termination from employment. The claimant's commercial driving license was not reinstated by the date agreed upon because Mr. Cummings had not completed all necessary conditions for reinstatement through the court system.

REASONING AND CONCLUSIONS OF LAW;

The administrative law judge concludes based upon the evidence in the record that the employer has sustained its burden of proof in establishing that the claimant's discharge took place under disqualifying conditions. Mr. Cummings was aware that the possession and

maintenance of a commercial driver's license was a necessary condition for his employment with Linn County. The loss of the claimant's driving privileges, through his personal actions, disregarded his employer's interests and reasonable standards of behavior that the county had a right to expect of its employees under the provisions of the Iowa Employment Security Act. As a special accommodation it was specifically agreed between the parties, that Mr. Cummings could remain employed in an alternate position until a designated day when he was to have obtained the required licensing, or in the alternative be discharged. Mr. Cummings was aware of the terms of the agreement, but did not fulfill his obligation to complete the steps necessary to have his license reinstated. The employer acted timely in discharging the claimant when the terms of the agreement were not met by the date agreed upon. The administrative law judge concludes based upon the evidence in the record that the claimant's failure to abide by the agreement was a current act of misconduct in connection with his employment, therefore benefits must be withheld.

DECISION:

The representative's decision dated April 26, 2007, reference 02, is hereby affirmed. Mr. Cummings was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

tpn/css