

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NICHOLAS D BRUNTON  
312 PICKANAX  
SHULLSBURG WI 53586**

**APPEAL NO. 09A-UI-19193-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FIRST FLEET INC  
202 HERITAGE PARK DR  
MURFREESBORO TN 37129**

**APPEAL RIGHTS:**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to:

***Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319***

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.

That an appeal from such decision is being made and such appeal is signed.

The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NICHOLAS D BRUNTON**  
Claimant

**APPEAL NO. 09A-UI-19193-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FIRST FLEET INC**  
Employer

**OC: 09/27/09**  
**Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge  
Section 96.3-7 – Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated December 14, 2009, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on February 2, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Matt Childs participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?  
Was the claimant overpaid unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant worked full time as an over-the-road truck driver for the employer from July 28, 2008, to May 7, 2009. He was informed and understood that under the employer's work rules, falsification of logbooks and noncompliance with United States Department of Transportation rules (DOT) or state law and regulations was prohibited. He was informed and understood that he was not allowed under DOT hours of service rules to continue driving after 14 hours after coming on duty. The claimant had been suspended on December 16, 2009, after he received a driver examination report for the Wisconsin State Patrol that he was 15 minutes over the 14-hour rule when he was stopped.

On April 27 and 28, 2009, the claimant wrote false information on his logbook regarding his locations and times to avoid hours of service violations.

On April 28, 2009, the claimant was involved in an accident when he backed into the nipple of a fire hydrant that was sticking out over the curb, which tore a hole in the bumper of the truck. After he reported this accident, the employer investigated the matter, including a review of the claimant's logs and discovered that at the time of the accident claimant was 2 hours over the 14-hour limit in violation of the hours of service rules and that his locations and times were inaccurate on April 27 and 28.

After finishing the investigation, the employer discharged the claimant on May 7, 2009, for having a preventable accident, falsifying his logs, and violating the DOT hours of service rules.

The claimant filed for and received a total of \$5,443.00 in benefits for the weeks between September 27, 2009, and February 6, 2010.

#### **REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant did not commit misconduct in regard to the accident on April 28, 2009. However, the claimant's violation of a known work rule regarding falsifying his logs and violating the 14-hour rule were willful and material breaches of the duties and obligations to the employer and substantially disregarded the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. It appears that the claimant had subsequent employment in August and September 2009 and again in December 2009. He can remove the disqualification as of the date when he has wages from later employers totaling \$3,740.00, and produces proof of those wages.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

**DECISION:**

The unemployment insurance decision dated December 14, 2009, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs