

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICIA C MORGAN

Claimant

APPEAL NO. 09A-UI-06939-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BARR-NUNN TRANSPORTATION INC

Employer

OC: 03/29/09

Claimant: Respondent (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Barr-Nunn, filed an appeal from a decision dated May 4, 2009, reference 01. The decision allowed benefits to the claimant, Patricia Morgan. After due notice was issued a hearing was held by telephone conference call on June 1, 2009. The claimant participated on her own behalf. The employer participated by Workers Compensation and Human Resources Coordinator Wendy Noring.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Patricia Morgan was employed by Barr-Nunn from June 15, 2001 until March 27, 2009 as a full-time over-the-road truck driver. Under company policy, new drivers and any driver who has been off work for 30 or more consecutive days for medical reasons, must pass a physical test before working. Ms. Morgan was on medical leave for non-work-related medical reasons from February 1, 2009, and was to return to work on March 27, 2009.

She failed the physical which involved lifting and carrying weights, squatting and other movements which simulate the type of activity needed to load and unload a truck. When she failed the test she was notified of the discharge by Workers Compensation and Human Resources Coordination Wendy Noring.

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.

A failure to successfully complete required course work is not evidence of misconduct where there is an attempt in good faith to satisfy the requirements. *Holt v IDJS*, 318 N.W.2d 28 Iowa App 1982). There is no evidence Ms. Morgan deliberately failed the physical test which resulted in her not being allowed to return to work. Whatever physical limitations prevented her from passing the test cannot be considered misconduct and disqualification may not be imposed.

DECISION:

The representative's decision of May 4, 2009, reference 01, is affirmed. Patricia Morgan is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css