

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**CHARLES A DUNN  
235 UNION ST  
NEBO IL 62355-1234**

**WENGER TRUCK LINES INC  
1011 FLORAL LN  
PO BOX 3427  
DAVENPORT IA 52802-3420**

**Appeal Number: 06A-UI-06038-CT  
OC: 05/14/06 R: 12  
Claimant: Appellant (1)**

**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 the **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.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a - Discharge for Misconduct

STATEMENT OF THE CASE:

Charles Dunn filed an appeal from a representative's decision dated June 5, 2006, reference 01, which denied benefits based on his separation from Wenger Truck Lines, Inc. (Wenger). After due notice was issued, a hearing was held by telephone on June 29, 2006. Mr. Dunn participated personally. The employer did not respond to the notice of hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Dunn began working for Wenger in August of 1999 as an over-the-road truck driver. On April 28, 2006, he learned that his CDL was revoked

due to an outstanding traffic issue in Michigan. He will not have his license for at least one year. Because the CDL was a requirement for his job, he could no longer work for Wenger.

Mr. Dunn learned in November of 2005 that he had outstanding payment of \$500.00 owed to Michigan. The payment resulted from traffic tickets. He attempted to contact the driver's license agency in Michigan by telephone but got a recording and remained on the line for 45 minutes without anyone answering. He wrote a letter to the Michigan agency in December of 2005 but got no response. He did not attempt to simply send the payment to Michigan at the same address as he sent the letter.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Dunn was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Dunn was discharged because he no longer had the CDL that was necessary for him to continue working for Wenger. He had notice in November of 2005 that he owed money in Michigan. He knew or should have known that a failure to make the payment might effect his driver's license and, therefore, his CDL. Mr. Dunn could have sent the payment to the same address as he directed his letter of inquiry in December of 2005.

Where an individual's own conduct renders him unemployable by his employer, he is guilty of misconduct within the meaning of the law. See Cook v. Iowa Department of Job Service, 299 N.W.2d 698 (Iowa 1980). The ability to maintain his CDL was within Mr. Dunn's control. For the reasons stated herein, the administrative law judge concludes that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied.

#### DECISION:

The representative's decision dated June 5, 2006, reference 01, is hereby affirmed. Mr. Dunn 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.

cfc/pjs