

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK A WILL
Claimant

APPEAL NO. 19A-UI-04884-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORSEMEN TRUCKING INC
Employer

OC: 06/02/19
Claimant: Respondent (2)

871 IAC 23.43(9)a – Cross Wage Claim Relief of Charges
Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated June 14, 2019, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on July 12, 2019. Employer participated by Stephanie Steffens. Claimant failed to respond to the hearing notice and did not participate. Employer's Exhibits 1-2 were admitted into evidence.

ISSUE:

The issue is whether the employer's account can be relieved of charges and whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on June 4, 2018. Claimant was discharged on June 4, 2018 by employer because claimant had multiple ride-along passengers with him on a trip when he had not obtained prior approval from employer. One of the passengers was a minor prohibited because of his young age.

Claimant worked as an over-the-road driver for employer. At the time of hire, employer gave claimant a handbook and documents indicating procedures to be followed if a passenger was desired for a trip. Documentation to be filled out included name of the passenger and length of the trip. Claimant had previously filled out this documentation for a trip.

The documents claimant received from employer included a statement that no minor under the age of 16 is legally able to ride in a semi on trips.

On a late May, 2018 trip, claimant was found to have been on a trip with an adult that he had not filled out documentation for. Additionally, on the trip was the woman's four-year-old child. Claimant was in an accident on the trip when his semi ran into an overpass. The truck was damaged and claimant had to stay at a hotel in Kentucky. Claimant and his female friend were

involved in problems at the hotel employer purchased for him, and the hotel staff found out claimant had an unattended four-year-old in the hotel room when claimant and his friend were out.

Claimant was terminated for putting employer at huge insurance risk, for violating laws against very young children on trips, and for not filling out documentation for guests in the semi.

The claimant has a cross wage claim with another state but earned wages from this employer in Iowa.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

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 violated known company rules through taking an unauthorized adult and a minor who would never be authorized on an extended route. This is misconduct. 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. It 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.

871 IAC 23.43(9) provides in part:

(9) Combined wage claim transfer of wages.

a. Iowa employers whose wage credits are transferred from Iowa to an out-of-state paying state under the interstate reciprocal benefit plan as provided in Iowa Code section 96.20, will be liable for charges for benefits paid by the out-of-state paying state. No reimbursement so payable shall be charged against a contributory employer's account for the purpose of Iowa Code section 96.7, unless wages so transferred are sufficient to establish a valid Iowa claim, and that such charges shall not exceed the amount that would have been charged on the basis of a valid Iowa claim. However, an employer who is required by law or by election to reimburse the trust fund will be liable for charges against the employer's account for benefits paid by another state as required in Iowa Code section 96.8(5), regardless of whether the Iowa wages so transferred are sufficient or insufficient to establish a valid Iowa claim. Benefit payments shall be made in accordance with the claimant's eligibility under the paying state's law. Charges shall be assessed to the employer which are based on benefit payments made by the paying state.

The employer's account is not chargeable based upon this separation.

DECISION:

The June 14, 2019, reference 01, decision is reversed in favor of the appellant. The claimant was discharged from employment due to job-related misconduct; however, this decision does not affect claimant's benefit status in the other state. The employer's Iowa account shall not be charged as the separation is disqualifying in Iowa.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn