

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TERRENCE S LIDDLE**  
Claimant

**APPEAL NO: 09A-UI-09450-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SMITHWAY MOTOR XPRESS INC**  
Employer

**OC: 05/25/09**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Terrence S. Liddle (employer) appealed a representative's June 26, 2009 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Smithway Motor Xpress, Inc. (employer). After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on July 17, 2009. The claimant participated in the hearing. Tom Nelson appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on June 20, 2008. He worked full time as an over-the-road truck driver at the employer's trucking company. His last day of work was May 20, 2009. The employer discharged him on that date. The stated reason for the discharge was driving after he had been taken out of service by a law enforcement officer in Maine.

On May 18 the claimant was stopped on a routine department of transportation stop as he was driving toward a shipper in Pennsylvania. The law enforcement officer did a check of the claimant's license status, and found information indicating that the license was suspended in the state of New York. As a result, the officer refused to allow the claimant to continue driving the truck, and had the truck towed. The officer gave the claimant a citation for driving with a suspended license. The officer also gave the claimant papers, which the claimant faxed to the employer but failed to read for himself. The papers indicated that the claimant was taken out of service, meaning he could not legally continue to operate the truck. The claimant disagreed with the officer's statement that his New York license was suspended, and so determined to disregard the officer's citation and continued to drive the truck. The claimant accompanied the truck to the tow yard, but then proceeded to pay the towing fee and drove the truck away, further driving through Maine at least another 30 miles before crossing the border. He

proceeded to drive to the shipper in Pennsylvania. The employer then directed him to the employer's Pennsylvania maintenance yard, where the claimant was told he was discharged.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's continued driving of the truck after being ticketed for having a suspended license, being given documents taking him out of service, and after the law enforcement officer had the truck towed, shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

**DECISION:**

The representative's June 26, 2009 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving

unemployment insurance benefits as of May 20, 2009. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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