

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MITCH R MOORE
Claimant

BAUER BUILT INC
Employer

APPEAL NO. 12A-UI-02607-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/09/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated March 9, 2012, reference 01, which held that the claimant was not eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 30, 2012. Claimant participated. The employer participated by Michael Kuehl, store manager, Davenport. The record consists of the testimony of Michael Kuehl; the testimony of Mitch Moore; and Employer's Exhibits 1-6.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer has 29 stores in the Midwest that provide tires and service. The claimant was hired on November 4, 2008, to work as a service person in the Davenport, Iowa, store. The claimant's last day of work was February 1, 2012. He was terminated on February 1, 2012.

On February 1, 2012, the claimant notified the employer that he was going to lose his driver's license for two years due to a conviction for OWI back on June 26, 2011. His license would be suspended on February 2, 2012. The employer's written policy, of which the claimant was aware, states that an employee must have a valid driver's license and must be insurable by the employer's insurance company. The claimant was required to make service calls in the employer's service trucks. In addition, the claimant was on a rotation for on call service since the employer responds to service calls 24 hours per day. As a result of the claimant's license suspension, the claimant could not drive the company vehicles. The claimant was also no longer insurable under the employer's insurance policy. The claimant was terminated due to his license suspension.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. An employer is entitled to establish requirements for a job and can reasonably expect that an employee will meet and continue to meet those requirements. The employer has the burden of proof to show misconduct.

In this case the evidence established that the claimant must have a valid driver's license in order to do his job. He was a service technician and had to be able to drive a company vehicle because service calls are made on the road. The employer's written policies very clearly state that employees must have a valid driver's license and must be insurable by the employer's insurance carrier. The claimant lost his driver's license due to his own actions. He made the

decision to drive while under the influence and was convicted of OWI. This is misconduct that disqualifies him from receiving unemployment insurance benefits. Benefits are denied.

DECISION:

The decision of the representative dated March 9, 2012, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs