

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANDREW E DANIEL**  
Claimant

**APPEAL NO. 10A-UI-04911-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HUMES DISTRIBUTING INC**  
Employer

**Original Claim: 02/28/10  
Claimant: Appellant (1)**

Section 96.5-2-a – Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated March 24, 2010, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 12, 2010. The claimant participated. The employer participated by Jane Humes, chief executive officer and owner. The record consists of the testimony of Jane Humes; the testimony of Andrew Daniel; and Employer's Exhibits 1 through 3.

**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 is an Anheuser Busch wholesaler. Beer is shipped to the employer from the brewery and then distributed to customers, such as restaurants, by route delivery drivers. The claimant was hired on November 10, 2008, as a relief route driver. One of the requirements of his job was that he obtain and maintain a CDL license. The claimant was aware of this requirement at the time that he was hired.

The claimant was arrested for OWI on February 27, 2010. Although he was not on duty, he was driving a company van when he was arrested. The claimant's driving privileges were suspended for six months. He lost his CDL license. He was terminated on March 1, 2010, by the employer, as he no longer had a valid CDL license.

**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.

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. The evidence in this case is uncontroverted that the claimant was terminated from his job after he was arrested for OWI on February 27, 2010. The claimant lost his CDL license as a result of his arrest. The claimant knew that having a valid CDL license was required in order to work for the employer. The claimant's own misconduct led to his termination. Misconduct has been established. Benefits are denied.

#### **DECISION:**

The representative's decision dated March 24, 2010, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/kjw