

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN H WADDELL
Claimant

APPEAL NO. 13A-UI-08565-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KELDERMAN LIME INC
Employer

OC: 06/23/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated July 17, 2013, reference 01, which denied benefits finding that the claimant was discharged because his driver's license had been suspended. After due notice was provided, a telephone hearing was held on August 28, 2013. Claimant participated. The employer participated by Ms. Kathi Schelker, Comptroller and Scott Adair, Supervisor.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Brian Waddell was employed by Kelderman Lime, Inc. from March 29, 2012 until June 27, 2013 when he was discharged for failure to maintain a valid driver's license. Mr. Waddell was employed as a full-time truck driver for the company and was paid by the hour. His immediate supervisor was Scott Adair.

Mr. Waddell had previously been warned by the company when his license had been previously suspended in July of 2012. Mr. Waddell was warned at that time that he must maintain a valid driver's license to continue in his employment as a company truck driver.

Mr. Waddell was injured in a work accident on March 20, 2013. Although it did not appear initially that Mr. Waddell had sustained any serious injuries as a result of the mishap, the claimant had been off work and receiving workmen's compensation until his return to work in June 2013.

While the claimant had been off work, his driver's license had again been suspended for non-payment of fines. Upon returning to work and resuming his truck driving duties, Mr. Waddell did not inform his employer that his license had been suspended. The claimant's return to work was reported to the company's insurance carrier and a cursory check of the claimant's driving record showed an additional suspension and the company was informed that

the insurance company would not insure Mr. Waddell. The claimant was terminated at that time for failure to maintain a valid driver's license.

Mr. Waddell maintains that the loss of his license was caused by the employer when additional payments for worker's compensation were delayed. It is the claimant's position that he did not know that his license had been suspended and he was not residing at the same location and mail was not being forwarded to him. It is the claimant's further position that his discharge was motivated solely in retribution for his workmen's compensation claim.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct in connection with the work. It does.

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. The focus is on deliberate or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In this matter the claimant was engaged as a full-time truck driver for this employer and was aware that he was required to possess and maintain a valid driver's license in order for him to

perform his duties. The claimant had been warned in July 2012 of this job requirement and was put on notice at that time that failure to maintain a proper driver's license could result in his termination. Mr. Waddell was discharged after he returned to work after being off for a period of time and resumed driving the company truck. Mr. Waddell did not inform the employer of his license suspension. The claimant's return to his driving duties were reported to the company's insurance carrier where it was determined that the claimant's driving privileges had again been suspended. Because the claimant's driving privileges had been suspended he was not insurable and was discharged for failure to maintain his driver's license.

The claimant's separation was inextricably tied to his self-inflicted suspension of his driving privileges. When the claimant's insurability was lost because of traffic infractions he had accumulated, the said loss was self-inflicted and disqualifying. Cook v. Iowa Department of Job Service, 299 N.W.2d 698 (Iowa 1980). The employer had met its burden of proving disqualifying misconduct. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated July 17, 2013, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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