

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WILLIAM B WATSON**  
Claimant

**APPEAL NO. 07A-UI-08110-MT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BARR-NUNN TRANSPORTATION INC**  
Employer

**OC: 07/22/07 R: 12  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated August 14, 2007, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 10, 2007. Claimant participated personally. Employer participated by Aimee Hanson, Safety Claims Supervisor.

**ISSUES:**

The issues in this matter are whether claimant was discharged for misconduct and is overpaid unemployment insurance benefits.

**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 the employer July 16, 2007.

Employer discharged claimant on July 18, 2007 because claimant was involved a rear end collision on July 18, 2007. Claimant was traveling the Washington D.C. Beltway at about 25 miles per hour. Claimant had three car lengths open in front of him. A car pulled in front of claimant leaving only one car length of distance. Claimant started to slow down. The car that merged in hit a vehicle in front of him and then the two stopped. Claimant was unable to stop in time due to the other vehicle's accident.

Claimant had no final warnings on his record. Claimant had a clean DMV record for ten years.

## 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.

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.

The administrative law judge holds that the evidence has not established that claimant was discharged for an act of misconduct when claimant violated the employer's policy concerning a preventable accident. Claimant was not warned concerning this policy.

The last incident, which brought about the discharge fails to constitute misconduct because the rear end accident was not preventable. Claimant incurred an accident because of another vehicle's negligence. Not all rear end accidents are preventable. Sometimes they are caused by the negligence of other drivers. Furthermore, the lack of a prior warning detracts from a finding of intentional conduct. Therefore, claimant was not discharged for an act of misconduct and as such, is not disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated August 14, 2007, reference 01, is affirmed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Marlon Mormann  
Administrative Law Judge

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Decision Dated and Mailed

mdm/css