

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARTY A WATTERS**  
Claimant

**APPEAL NO. 15A-UI-00416-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OZARK AUTOMOTIVE DISTRIBUTORS INC**  
Employer

**OC: 04/27/14**  
**Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from a representative's decision dated January 6, 2015 (reference 03) which denied unemployment insurance benefits, finding that the claimant was discharged from work on December 1, 2014 for violation of a known company rule. After due notice was provided, a telephone hearing was held on February 4, 2015. Claimant participated. The employer participated by Ms. Witney Smith-McIntosh, Human Resource Supervisor.

**ISSUE:**

At issue is whether the claimant was discharged for misconduct in connection with the work.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Marty Watters was employed by Ozark Automotive Distributors, Inc. as an over-the-road tractor/trailer driver from November 14, 2014 until December 1, 2014 when he was discharged from employment. Mr. Watters was employed full time and was paid by the hour.

Mr. Watters was discharged from his employment with Ozark Automotive Distributors Inc. after a company review of DOT and driving history provided by the claimant contained significant omissions.

In determining whether an applicant is qualified to work as a DOT route driver for the company, the company reviews the applicant's DOT history and also considers the applicant's answers to questions related to his or her driving history, accidents, and citations; including citations, infractions, or accidents that had taken place while the applicant may have been driving his or her own personal vehicle.

Based upon Mr. Watters submission of DOT paperwork, and his answers to questions about the amount of damage to vehicles in commercial driving incidents and his answers to questions about accidents or driving his personal vehicle, the claimant was initially considered qualified and was hired by the company.

Subsequently, it was determined that Mr. Watters had unreported the amount of damage that had been caused when he had hit a parked vehicle while employed by a previous company. The company determined that Mr. Watters had not reported accidents that had taken place while he was driving his personal vehicle, in response to a specific question on that issue.

In recalculating the effect of the previous commercial driving incidents and personal driving accidents that had been under reported or omitted by Mr. Watters, a decision was made to terminate Mr. Watters from his employment because he did not meet the driving history criteria required by the company. The employer considered the claimant's omissions in reporting to be intentional.

#### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct on the part of the claimant. It does.

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Dep't of Job Serv., 275 N.W.2d 445, 448 (Iowa 1979).

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. Misconduct serious enough to warrant the discharge of an employee, may not necessarily be serious enough to warrant a denial of unemployment insurance benefits. See Lee v.

Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In the case at hand, the claimant was required to provide not only his DOT records but was also required to truthfully answer questions presented to him about his previous commercial driving history and personal driving history. When it was determined that the claimant had underestimated the damage to a parked vehicle that he had struck while employed by a different trucking company and that the claimant had not reported previous accidents that had taken place while he was driving his personal vehicle, the company concluded that Mr. Watters had been untruthful and that the claimant's omissions and misstatements had made him appear to be qualified to be hired for the over-the-road tractor/trailer drivers position, when he did not in fact meet the company's driving history criteria.

The administrative law judge finds that the claimant's under reporting of the damage to a parked vehicle, which had taken place while he was employed by a different trucking company, did not rise to the level of intentional misconduct. The claimant's approximation of the damage was not unreasonable and Mr. Watters was unaware that his previous employer had placed a higher dollar value on the damage that had occurred.

The administrative law judge does, however, find that the employer has sustained its burden of proof with respect to Mr. Watters failure to report previous driving accidents that occurred while driving his personal vehicle. Although the company had specifically questioned Mr. Watters about accidents while driving his own vehicle, none were reported by the claimant. Subsequently, the company learned that the claimant's answers to these questions were not truthful.

Because the claimant was aware that the company was closely monitoring his driving history to determine whether he was qualified to be hired by the over-the-road driving position, the claimant's failure to provide candid answers in response to a clear question about accidents that had taken place while driving his personal vehicle showed an intentional disregard for the employer's interests and standards of behavior that the employer had a right to expect under the provisions of the Employment Security Law. 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 he is otherwise eligible.

**DECISION:**

The representative's decision dated January 6, 2015 (reference 03) 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 he is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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