

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**MARK L TUBBS
1350 WASHINGTON AVE
RENWICK IA 50577**

**CUSTOM MADE PRODUCTS COMPANY
1875 BIRCH
BRADGATE IA 50520-8714**

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ATTORNEY AT LAW
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**Appeal Number: 04A-UI-00260-RT
OC: 10-19-03 R: 01
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Mark L. Tubbs, filed a timely appeal from an unemployment insurance decision dated January 8, 2004, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on January 30, 2004, with the claimant participating. The claimant was represented by Monty L. Fisher, Attorney at Law. Rodney G. Naeve, Operations Manager, participated in the hearing for the employer, Custom Made Products Company. This matter was consolidated with appeal number 04A-UI-00936-RT for the purposes of the hearing with the consent of the parties. The parties had not received notice of that appeal concerning an overpayment but the parties permitted the administrative law judge to take evidence on and decide, if necessary, that appeal and whether the claimant was overpaid unemployment insurance benefits. The parties waived further notice of that issue.

The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time semi truck driver from October 2002 until he was discharged on September 4, 2003. The claimant was discharged because he lost his driver's license, a commercial driver's license. When the claimant was hired, he was told that he would be driving a semi truck and that this would require a commercial driver's license and the claimant was aware of that. The claimant had a commercial driver's license at that time and the employer so verified. However, on or about September 4, 2003, the claimant lost his commercial driver's license because of a charge of OWI (Operating a motor vehicle While Intoxicated). The claimant no longer drive a truck driving for the employer and was discharged because his means to do the work for which he was hired was lost. There were no other reasons for the claimant's discharge and the claimant had never received any warnings about maintaining a driver's license. The OWI charge and offense was unrelated in any way to the claimant's employment.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from the employment was a disqualifying event. It was.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The parties concede that the claimant was discharged. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The claimant was hired specifically to drive a semi truck and this required a commercial driver's license. The claimant had one at the time of his hire and throughout his employment while driving a truck. However, the claimant lost his commercial driver's license as a result of an OWI offense. His OWI offense was totally unrelated to his employment. The claimant was thereafter unable to drive a semi truck because he had lost his commercial driver's license (CDL). The claimant was aware when he was hired to drive the semi truck for the employer that he needed to have a commercial driver's license. His OWI conviction was unrelated to his employment. Accordingly, the administrative law judge is constrained to conclude that the claimant's act in losing his commercial driver's license and causing his discharge was a deliberate act or omission constituting a material breach of his duties and obligations arising out of his worker's contract of employment and evinced a willful or wanton disregard of the employer's interests and was disqualifying misconduct.

The claimant testified that he had discussions with the employer about continuing work doing something else. The employer's witness, Rodney G. Naeve, Operations Manager, denied any such conversations. In any event, the claimant never worked for the employer in any other capacity either before or after losing his CDL. The administrative law judge concludes that whether the claimant had discussions with the employer about doing something else for the employer is really not relevant because there is no evidence that the claimant ever did any other work for the employer. Further, Mr. Naeve testified that the employer had no other work available for the claimant. Even if other employment was discussed, it would not have been specifically for the employer and further, there was no promise that the employer would have work for the claimant or that any other employer would have work for the claimant and the claimant performed no other work.

Accordingly, the administrative law judge concludes the claimant was discharged for disqualifying misconduct, and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

DECISION:

The representative's decision of January 8, 2004, reference 01, is affirmed. The claimant, Mark L. Tubbs is not entitled to receive unemployment insurance benefits until or unless he requalifies for such benefits.

pjs/b