

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STANLEY K GARDNER**  
Claimant

**APPEAL NO: 07A-UI-01975-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BARR-NUNN TRANSPORTATION INC**  
Employer

**OC: 01/28/07 R: 12  
Claimant: Respondent (1)**

Section 96.5-2- a- Discharge

**STATEMENT OF THE CASE:**

Barr-Nunn Transportation, Inc. (employer) appealed a representative's February 22, 2007 decision (reference 01) that concluded Stanley K. Gardner (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 13, 2007. The claimant participated in the hearing. Amy Hanson, a safety claim coordinator, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the employer discharge the claimant for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on August 12, 2004. The claimant worked as a full-time company driver.

During the claimant's employment he backed into a dock on March 15, 2006. This accident broke off some steps of the claimant's truck. On March 31, 2006, the claimant was involved in another accident that resulted in \$800.00 damage. As a result of these two accidents, the employer had the claimant take three months of retraining for safety reasons.

On November 30, 2006, the claimant received directions from the employer regarding the route he needed to take to get to a delivery site. About midnight, the claimant found himself driving on a one-way residential street that was not a drivable route for a truck. The claimant knew he had to turn the truck around and get off the residential street. He had two options, he could back onto a major street or he could turn the truck around at a gas station. The claimant chose the safer alternative and turned around at a gas station. As the claimant turned the truck in the gas station parking area, he unknowingly hit a parked car and pushed it into a tree. The claimant did not feel or hear hitting a parked vehicle. Since the claimant did not know he had hit

a parked vehicle, he started driving away. A police officer observed the claimant and stopped him. As soon as the claimant was stopped, he contacted the employer to report the incident.

The claimant received three citations for the November 30 accident. One of the citations, leaving the scene of an accident, was later dismissed. Another citation, failure to report an accident, resulted in 0 points on the claimant's driving record. The third citation, careless driving, was reduced so again the claimant did not receive any points on his driving record.

The employer did not discharge the claimant for the November 30 accident until December 22, 2006. By December 22, 2006, the employer learned the accident resulted in over \$2,600.00 monetary damage. When the employer discharged the claimant, the employer informed the claimant he was discharged because of the cost of the claim.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

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. 871 IAC 24.32(8).

The employer established business reasons for discharging the claimant. The employer knew about the accident on November 30, but did not discharge the claimant until December 22, 2006. The employer discharged the claimant for an incident that does not amount to a current act. Even if the November 30 accident should be considered a current act, the claimant's actions that resulted in the accident do not amount to an intentional or substantial disregard of the employer's interests. The claimant relied on "bad" directions he received from the employer and after he realized he was on a route that was not for trucks, he took a reasonable course of action. The claimant may have used poor judgment when he turned around in a gas station parking lot, but he did not act negligently or in such a careless manner that constitutes work-connected misconduct. The claimant did not commit work-connected misconduct. Therefore, as of January 28, 2007, the claimant is qualified to receive unemployment insurance benefits.

**DECISION:**

The representative's February 22, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute a current act of work-connected misconduct. As of January 28, 2007, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs