

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRIS B CUTLER**  
Claimant

**APPEAL NO. 07A-UI-10187-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MIKE BROOKS INC**  
Employer

**OC: 09/30/07 R: 12**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Chris B. Cutler (claimant) appealed a representative's October 24, 2007 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Mike Brooks, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 20, 2007. The claimant participated in the hearing. Kevin Andrew 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:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on September 26, 2006. He worked full time as an over-the-road truck driver in the employer's commercial motor carrier business. His last day of work was September 21, 2007. The employer discharged him on that date. The stated reason for the discharge was repeated falsification of his driver log books.

The claimant's job subjected him to the hours of service and log book requirements and regulations of the Federal Motor Carrier Safety Administration of the Department of Transportation (49 CFR, Part 395). Prior to September 21, 2007 the employer had given the claimant various warnings and write-ups for improper log reporting, most recently on August 28, 2007. He had been instructed that should he find himself in a situation in which his delivery deadline placed him in conflict with the hours of service requirements he was to contact the safety department for direction.

On September 20, 2007 the claimant was dispatched at approximately 1:00 p.m. from Bowling Green, Kentucky, bound for the employer's drop off site near Kansas City, Missouri, for a delivery deadline on September 21, 2007 at 9:30 a.m. The claimant calculated that if he ran into any traffic delays, he might be close to the end of his hours of service by the delivery

deadline. However, he was concerned that if he was late with the delivery, the business client might impose significant penalties on the employer, so he compressed the travel time by cutting his rest time short so that he actually made delivery at about 8:00 a.m., about an hour and a half ahead of the deadline.

After he made the delivery, the claimant was attempting to rest in the truck sleeper before going to pick up another load. The truck's Qualcomm communication system broadcasts were disturbing his rest, however, so he contacted the employer's safety assistant and his dispatcher to complain. During the conversation, upon discovering his location and status, they queried him about the accuracy of his trip report; he declined to respond as to whether his logs would be both accurate and in compliance with the hours of service provisions. Mr. Andrew, the director of safety, was then brought into the call, and the claimant also declined to him that his logs for the trip would both be accurate and in compliance with the hours of service provisions. As a result of this final situation after the prior warnings to the claimant, the employer discharged the claimant.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

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.

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 focus of the definition of misconduct is on acts or omissions by a claimant that “rise to the level of being deliberate, intentional or culpable.” Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
  - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
  - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
  - a. Manifest equal culpability, wrongful intent or evil design; or
  - b. Show an intentional and substantial disregard of:
    1. The employer's interest, or
    2. The employee's duties and obligations to the employer.

The claimant's failure to comply with the requirements of maintaining accurate logs as well as complying with the hours of service regulations after prior warnings from the employer shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

**DECISION:**

The representative's October 24, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of September 21, 2007. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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