

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM T CUMMINS
Claimant

APPEAL NO. 09A-UI-00551-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BARR-NUNN TRANSPORTATION INC
Employer

**OC: 12/21/08 R: 12
Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated January 14, 2009, reference 01, which held the claimant eligible to unemployment insurance benefits. After due notice a telephone conference hearing was scheduled for and held on January 29, 2009. Although duly notified the claimant was not available at the telephone number he provided. The employer participated by Brenda Schletta, Safety Administration Supervisor. Employer's Exhibits One through Nine were received into evidence.

ISSUES:

The issues in this matter are whether the claimant was discharged for misconduct and whether the claimant 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: The claimant worked for this employer from July 2, 2002 until May 27, 2008 when he was discharged for repetitive DOT and company safety violations after being warned. Mr. Cummins was employed as an over-the-road tractor/trailer driver and was paid by the mile.

During the course of his employment, Mr. Cummins had received numerous Department of Transportation citations for failure to maintain log books and related recordkeeping infractions. Mr. Cummins was aware of the requirement that he comply with DOT regulations and keep proper logs and was aware that it was a violation of company policy to fail to do so. During the course of his employment Mr. Cummins had been repeatedly warned by the employer and had been placed on probation on five separate occasions for violations of DOT and company hours of service rules.

A final decision was made to terminate Mr. Cummins when he received a final DOT citation for failing to maintain log books for the previous seven days as required by law. Mr. Cummins had

no explanation for his failure to comply with company and DOT requirements after being warned.

REASONING AND CONCLUSIONS OF LAW:

The question for the administrative law judge is whether the evidence in the record establishes that Mr. Cummins was discharged for misconduct in connection with the employment. It does.

The evidence in the record establishes that the claimant was aware of company and Department of Transportation rules and regulations which required the claimant to maintain proper hours of service and proper recordkeeping. The evidence in the record establishes that Mr. Cummins had been repeatedly warned by the company and had been placed on probationary status for these violations on five separate occasions before being discharged. The claimant was discharged when he failed to maintain proper logs for the previous seven days while operating a tractor/trailer unit for his employer, Barr-Nunn Transportation.

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.

The administrative law judge concludes that the claimant's repeated violations of company and DOT regulations showed a willful disregard for the employer's interests and standards of behavior and thus was disqualifying conduct.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated January 14, 2009, reference 01, is reversed. The claimant was discharged for misconduct. Unemployment insurance benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided that he is otherwise eligible. The administrative law judge remands to the Claims Division the issue of whether the claimant has been overpaid, the amount of the overpayment and whether the claimant will have to repay those benefits.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs