

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFFREY W BINGHAM

Claimant

APPEAL NO. 07A-UI-07166-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FEDEX FREIGHT EAST INC

Employer

**OC: 06/17/07 R: 04
Claimant: Appellant (1)**

Iowa Code Section 96.5(2)a – Disciplinary Suspension/Misconduct

STATEMENT OF THE CASE:

Jeffrey Bingham (claimant) appealed a representative's July 19, 2007 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was placed on disciplinary suspension from work with Fedex Freight East (employer) for violation of a company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 8, 2007. The claimant participated personally. The employer did not provide a telephone number where it could be reached and, therefore, did not participate.

ISSUE:

The issue is whether the claimant is disqualified from receiving unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on November 2, 1998, as a full-time road driver. He is required to maintain a Commercial Drivers' License (CDL) to work for the employer. The claimant failed the air brake section of the test and could not retake the test for 31 days. The next month the claimant took the test, passed and received his CDL. The employer suspended the claimant from work from June 18 to July 19, 2007, while he did not have a valid CDL.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was suspended from employment for a disqualifying reason.

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(9) provides:

(9) Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). The failure of an employee to maintain a license which he must have to perform the duties of the job is misconduct. The claimant's license was removed. His subsequent separation from employment was misconduct. He is not eligible to receive unemployment insurance benefits while suspended from employment.

DECISION:

The representative's July 19, 2007 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was suspended from work for misconduct. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css