

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRANDON L BUNSTON
Claimant

APPEAL NO. 12A-UI-13707-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRAIRIE ENERGY COOPERATIVE
Employer

OC: 10/21/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated November 9, 2012, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 17, 2012. The claimant participated personally. The employer participated by Lori DeMuth, Accounting/Human Resources; Darrell Goff, General Manager; and Ken Norem, Supervisor. The record consists of the testimony of Lori DeMuth and the testimony of Brandon Bunston.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a rural electric utility. The claimant was hired first as a temporary employee on June 20, 2007 and as a full-time employee on August 20, 2007. He was a full-time lineman. The claimant's last day of work was October 19, 2012. He resigned in lieu of termination on October 22, 2012.

The claimant was arrested for OWI on Friday, October 19, 2012. As a result of that arrest, his CDL license was suspended. The employer required the claimant to have a valid CDL license because he drove a truck and was on call.

REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The employer has the burden of proof to establish misconduct.

The claimant is not eligible for unemployment insurance benefits. The claimant was required to have a valid CDL license in order to do his job as a lineman for a rural electric company. The claimant lost his license due to his own actions. If an individual loses his or her license and that license is a requirement for the job, then it is considered disqualifying misconduct. Accordingly, benefits are denied.

DECISION:

The decision of the representative dated November 9, 2012, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/tll