

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEFFERY D MALOY**  
Claimant

**APPEAL NO. 09A-UI-09758-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BARR-NUNN TRANSPORTATION INC**  
Employer

**OC: 05/31/09**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated July 1, 2009, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on July 22, 2009. Claimant participated. Employer participated by Wendy Noring, human resources. The record consists of the testimony of Wendy Noring; the testimony of Jeffery Maloy; and Employer's Exhibits One through Two.

**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 claimant worked as an over-the-road truck driver. He was initially hired on August 10, 2006. The incident that led to his termination occurred on May 20, 2009. The claimant was hauling a load for Wal-Mart and needed to get some paperwork signed at a Sam's Club Distribution Center in Indiana. The claimant had problems finding the right person to sign the paperwork. When the third person he spoke to refused to sign his paperwork, he told her that he did not appreciate her "shitty attitude" and that he did not think he would shop at Wal-Mart again. He also told her that his company was doing Wal-Mart a favor by hauling their merchandise.

An employee of Wal-Mart named Laura Hall sent an email to the employer's director of operations complaining about the claimant's belligerent conduct and use of profanity. As a result, the claimant was terminated. The termination occurred within approximately one half hour after the claimant had the conversation with the Wal-Mart employee.

## 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 warrants termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Profanity or other offensive language in a confrontational or disrespectful context may constitute misconduct, even in isolated situations. Isolated instances of poor judgment or discretion, however, are not sufficient to disqualify an individual.

After carefully considering the facts in this case, it is concluded that the employer has not shown misconduct. There is no question that the claimant used poor judgment when using the word "shitty" and by indicating that he would not shop at Wal-Mart in the future. The employer had good grounds to terminate his employment. A single instance of poor judgment, however, does not constitute misconduct. There was no pattern of this type of behavior shown by the evidence. Benefits will be allowed, if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated July 1, 2009, reference 02, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs