

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DON W COPE**

Claimant

**APPEAL NO. 09A-UI-06992-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BARR-NUNN TRANSPORTATION INC**

Employer

**Original Claim: 04/05/09**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Don W. Cope (claimant) appealed a representative's April 28, 2009 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Barr-Nunn Transportation, Inc. (employer). After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on June 2, 2009. The claimant participated in the hearing and presented testimony from one other witness, Daniel Skethway. Eileen Spendore appeared on the employer's behalf and presented testimony from one other witness, Shari Porohl. During the hearing, Employer's Exhibit One was entered into evidence. 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 August 31, 2006. He worked full time as a driver in the employer's over-the-road trucking business. His last day of work was April 3, 2009. The employer discharged him on that date. The stated reason for the discharge was continued log book irregularities and discrepancies.

Prior to 2009, the claimant had received a few counselings, including one in January 2007 for failing to accurately record fuel stops in his driving logs, consequently resulting in an hours-of-service violation. On February 3, 2009, the claimant received a DOT citation for his log book not being current, as he had not recorded the end of his rest time and start of his driving and work time, although he had only begun driving about eleven miles/minutes before being stopped and checked. As a result of the DOT citation, the employer additionally counseled him on the need for accurate logbooks.

The employer then performed an audit of the claimant's logs for a period in January 2009. The employer found there were several discrepancies, including significant times over several days where he had logged he was sleeping when the employer's GPS system showed he was driving. On March 3, he was warned that this was not acceptable and his logs needed to be accurate.

On April 2, the employer did a follow up audit of the claimant's logs from March 15 through March 26. The audit showed that again there were several days where the claimant's logs showed he was sleeping for a significant length of time when the GPS system showed he was driving or on duty, for example, on March 23, for a period of three and a half hours, where the GPS showed he was driving for all but an interval of about 15 minutes when he was on duty but not driving. Similarly, there were other examples, such as on March 22, where the claimant's log showed he was driving for a two-hour period, but the GPS system showed he was not driving. As a result of the continued failure to maintain correct and accurate logs, the claimant was discharged.

#### **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.

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's repeated failure to maintain correct and accurate logs as reasonably required 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 April 28, 2009 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of April 28, 2009. 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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