

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRIS G MARTIN**  
Claimant

**APPEAL NO. 09A-UI-07499-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BARR-NUNN TRANSPORTATION INC**  
Employer

**OC: 04/12/09**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The claimant appealed a department representative's decision dated May 8, 2009, reference 01, that held he was discharged from work for violation of a known company rule on April 8, 2009, and benefits are denied.

A telephone hearing was scheduled and held on June 9, 2009. The claimant participated. Wendy Noring, Human Resource Representative, participated for the employer. Employer's Exhibits One through Five were received as evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, finds that: The claimant began working as a full-time over-the-road truck driver for the employer on December 4, 2008. The claimant received the Driver Conduct and Disciplinary Policy of the employer that contains a provision that he may be terminated for excessive idle time.

Claimant received a written warning and was placed on probation beginning March 23, 2009, to September 23, 2009 for excessive idle time. The employer communicated to the claimant and other drivers that they have an expectation of not exceeding 40 percent for excessive idle time. The purpose of the policy is to reduce fuel costs to the employer.

The employer has an automated system which it sends Qualcomm messages to drivers. The claimant was sent messages on seven separate occasions from March 25 through April 6, 2009, to turn off his truck due to excessive idle time.

Claimant was advised to drive his semi to the Manchester terminal on April 8, 2009. The claimant was advised that he was discharged from employment for violation of the employer's policy regarding excessive idle time after having been warned.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes that the employer has established that the claimant was discharged for misconduct in connection with employment on April 8, 2009, for violation of the company policy regarding excessive idle time.

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 claimant knew and understood the policy of the employer regarding excessive idle time, but he unfortunately considered it to be a goal rather than an expectation that is established by the employer exhibits. The claimant was put on notice that his job was in jeopardy when he was placed on probation by the issuance of a written warning on March 23, 2009. The employer has established that the claimant violated the excessive idle time policy of the employer on seven separate occasions from the date of the warning through April 6, 2009.

The claimant's explanation that he had to keep the truck running because he was cold, is not credible, as there is no evidence that he communicated such an advisement to the employer nor is it reasonable given the circumstances.

**DECISION:**

The decision of the department representative dated May 8, 2009, reference 01, is affirmed. The employer has established the claimant was discharged for misconduct from work on April 8, 2009. The claimant is not entitled to receive benefits until he has worked in and been paid wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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R. L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

srs/pjs