

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRADFORD C YODER
Claimant

APPEAL NO. 08A-UI-05444-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA DEPARTMENT OF
TRANSPORTATION**
Employer

**OC: 05/18/08 R: 03
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Bradford Yoder, filed an appeal from a decision dated June 9, 2008, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on June 24, 2008. The claimant participated on his own behalf. The employer, Iowa Department of Transportation (IDOT), participated by Employee Relations Officer Dana Allen, District Maintenance Manager Gretchen Gresslin, Maintenance Area Supervisor Travis Nitcher, and was represented by TALX in the person of David Williams.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Bradford Yoder was employed by IDOT from August 20, 1985 until May 15, 2008, as a full-time highway technician associate. On October 13, 2007, he was charged with driving under the influence (DUI) and he notified Maintenance Area Supervisor Travis Nitcher the next day. District Maintenance Manager Gretchen Gresslin and Mr. Nitcher met with Mr. Yoder on October 15, 2007, to notify him his job required him to have a valid driver's license and commercial driver's license, which he knew. He was further notified if he lost those driving privileges he would not have a job.

The Motor Vehicle Division (MVD) of the IDOT notified the claimant and the employer in early April 2008, both of Mr. Yoder's licenses were being revoked effective May 12, 2008. He filed an appeal to the Iowa Department of Inspections and Appeals and a hearing was later held. The administrative law judge's decision dated May 14, 2008, found the claimant's licenses should not be revoked. However, MVD filed an appeal to the director which meant the original determination to revoke the licenses effective May 12, 2008, remained in effect.

The employer confirmed through the Office of Driver Services and Office of Employee Services the revocation decision remained in full force and effect pending the director's decision. From

May 12 until 15, 2008, the claimant was assigned to non-driving duties until clarification was received. He was discharged on May 15, 2008.

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.

The claimant knew having a valid driver's license and commercial driver's license was a requirement of his job, and this was reinforced when he first notified the employer of the DUI charge. The revocation was effective May 12, 2008, and remains in full force and effect pending the review by the director from the administrative law judge's decision. The claimant is not able to perform the essential functions of his job because of loss of his driving privileges as a result of the DUI charge. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of June 9, 2008, reference 01, is affirmed. Bradford Yoder is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs