

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK P MORGAN

Claimant

APPEAL NO. 07A-UI-10422-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WATERLOO WATER WORKS

Employer

**OC: 09/23/07 R: 03
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Mark Morgan (claimant) appealed a representative's November 2, 2007 decision (reference 03) that concluded he was not eligible to receive unemployment insurance benefits because he was suspended from work with Waterloo Water Works (employer) misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 29, 2007. The claimant was represented by Kevin Engels, Attorney at Law, and participated personally. The employer was represented by Steven Weidner, Attorney at Law, and participated by Dennis Clark, General Manager. Rick Wilberding observed the hearing. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was suspended for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on September 4, 1979, as a full-time combination worker. The claimant's job description requires that he obtain and maintain a valid Commercial Drivers' License (CDL). On July 13, 2007, the claimant was arrested for Operating a Motor Vehicle While Intoxicated (OWI). He pled guilty to the charge. His regular drivers' license was revoked on October 1, 2007. His CDL was revoked as of October 9, 2007. On October 1, 2007, the claimant agreed to be suspended from employment rather than be terminated for his failure to maintain his CDL. The employer agreed to continue the claimant's benefit coverage. On October 22, 2007, the claimant and employer agreed to a suspension from work until such time as his CDL was reinstated due to the claimant's misconduct. The claimant filed for unemployment insurance benefits with an effective date of September 23, 2007.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was suspended for misconduct

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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). The failure of an employee to maintain a license that he must have to perform the duties of the job is misconduct. The claimant's license was removed and the claimant pled guilty to the act that led to the revocation. His subsequent suspension from employment was due to misconduct. He is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's November 2, 2007 decision (reference 03) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw