

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROGER L EVERSON**  
Claimant

**APPEAL NO. 10A-UI-15716-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ENNIS CORP**  
Employer

**OC: 10/10/10  
Claimant: Appellant (2)**

Section 96.5-2-a – Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a decision of a representative dated November 12, 2010, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on January 10, 2011. The claimant participated. The claimant was represented by Neven Mulholland, attorney at law. The employer participated by Melinda Anderson, office manager/human resources. The employer was represented by Robert Malloy, attorney at law. The record consists of the testimony of Melinda Anderson; the testimony of Roger Everson; Claimant's Exhibit A; and Employer's Exhibits 1 through 10.

**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 employer is a transportation company located in Clarion, Iowa. The claimant was hired on September 18, 2009, as an over-the-road driver. His last day of work was October 8, 2010. He was terminated on October 15, 2010.

The claimant was required to have a valid CDL. On October 4, 2010, the employer was informed that the claimant's CDL had been suspended because he had failed to pay a ticket in Virginia. The claimant was on the road and he had to be brought back to Iowa. The employer also received a notification that the claimant was uninsurable due to the suspension of his CDL.

A letter, on letterhead of the Iowa Department of Transportation, and signed by Kim Snook, director, office of driver services, which is dated September 30, 2010, states:

The withdrawal of your Iowa motor vehicle privileges due to Non-Payment of Iowa Fine has been rescinded and removed from your Iowa driving record. You are eligible to operate motor vehicles in Iowa.

Your license is valid, unless expired.

If your privilege to operate motor vehicles has been withdrawn in another jurisdiction, you may be required to provide clearance information from that jurisdiction.

(Exhibit A)

A ticket was issued to the claimant in Virginia on May 31, 2010, for operating without required equipment. (Exhibit 3)

#### **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 leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). See also Greene v. EAB, 426 N.W.2d 659 (Iowa App. 1988). The employer has the burden of proof to show misconduct.

As a general rule, if an individual is required to have a valid CDL in order to perform his job and then loses his license as a result of his own actions, the employer has established disqualifying misconduct. The employer was clearly under the impression that the claimant's CDL license had been suspended due to non-payment of a fine that had been levied in Virginia on May 31, 2010. In addition, the employer had been informed by its insurance carrier that the claimant was no longer insurable. Ms. Anderson testified that the claimant admitted that his license had been suspended and that he had not paid the fine.

What makes this case unusual is that the claimant produced a letter on Iowa Department of Transportation letterhead that clearly states that the claimant's CDL suspension had been rescinded on September 30, 2010. The claimant was not a credible witness on his own behalf. He could not remember when he got the ticket or when he had paid it. There is no evidence that he produced the DOT letter to his employer and he could not give many details on why he was terminated. But for this letter, the administrative law judge would conclude that the claimant's license had been suspended and that he was not insurable. However, the letter clearly states that he did have a valid CDL at the time he was terminated.

The employer provided numerous instances of misconduct, any of which could constitute good business reasons for terminating the claimant. However, the final act of alleged misconduct was the suspension of the claimant's license. At the time of termination, that suspension had been rescinded by the Iowa DOT. The administrative law judge must conclude, therefore, that there is no current act of misconduct. Benefits are allowed if the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated November 12, 2010, reference 01, is reversed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/kjw