

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GARY D MERRELL
Claimant

APPEAL NO. 13A-UI-12435-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BARR-NUNN TRANSPORTATION INC
Employer

OC: 10/06/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated November 1, 2013, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on November 27, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Dan Inman participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as an over-the-road truck driver. He had worked for the employer in 2010 and 2011. He returned to work for the employer from February 15 to August 23, 2013.

During his prior employment, the claimant had two accidents. In March 2010, the claimant neglected to keep a proper lookout and backed into the steps and fuel tank of another vehicle. In February 2011, the claimant neglected to keep a proper lookout and clipped the trailer of another vehicle while he was turning around in a parking lot. He was placed on probation for these accidents. On August 22, the claimant dozed off while driving and ran into a concrete barrier causing substantial damage to the truck.

The employer discharged the claimant on August 23, 2013, for repeated accidents that were due to the claimant's negligence.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The evidence establishes that the claimant was discharged for repeated negligence. He was warned about the accidents and was placed on probation for his negligence. He disregarded the standards of driving safety that the employer had the right to expect of him. His repeated negligence equals willful misconduct in culpability in this case.

DECISION:

The unemployment insurance decision dated November 1, 2013, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css