

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAWN PARMENTER
Claimant

APPEAL NO: 12A-UI-10291-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

B3 TRUCKING LLC
Employer

OC: 07-08-12
Claimant: Respondent (2R)

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 14, 2012, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 18, 2012. The claimant participated in the hearing. Brian Beck, Owner, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time local truck driver for B3 Trucking from December 24, 2011 to July 14, 2012. The claimant was driving Owner Brian Beck's father's truck. He was hauling feed and repeatedly asked for additional loads as the feed loads were decreasing dramatically. The claimant was expected to call the employer when he finished hauling feed so he could be assigned to help haul grain and keep the truck in service in order to cover the truck payments, fuel, repairs, insurance and other expenses, but the claimant refused to call the employer and report he was done and pick up another load. The employer always had grain to haul and needed help in that area but the claimant declined to take those loads with the exception of one occasion when he accepted a load and his truck broke down. Approximately one month prior to the claimant's termination, the employer told the claimant he needed to take more loads and generate more income from the truck as he was only hauling 12 to 13 loads every two weeks. In contrast, the claimant's replacement is taking 27 to 28 loads every two weeks. The employer offered loads to Kansas City every night with a five hour turnaround time. The claimant was usually done hauling feed between 1:00 p.m. and 3:00 p.m. daily but did not want to take the Kansas City loads because he had to get up early. The claimant was experiencing problems with the truck in July 2012 and it was his responsibility to take the truck to Omaha, which was 82 miles away, for repairs. The employer paid for his time. The claimant asked if the previous driver of that truck could take it for repair because he did not want to drive to Omaha and wait

for the repair to be made and he did not know where the repair shop was located. The claimant admitted he could have used map quest or Google to find the repair shop. That, and the fact the claimant was not willing to haul grain after he finished hauling feed, and was not calling for loads of grain as the previous driver had done and which was the claimant's responsibility in order to help the employer pay for all of the expenses associated with the truck and make a profit, were the last straw for the employer. The claimant's employment was terminated July 14, 2012.

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job 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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer's expectations that the claimant would keep the truck in service as much as possible and call as directed every day after finishing his feed loads so he could help with the grain loads was not unreasonable. Although the claimant often asked for additional loads he repeatedly failed to call the employer after

finishing his feed loads so he could run grain loads. The claimant knew that the employer needed to run the truck at least a full work day to cover expenses and it was his responsibility to call for another load and accept those loads at least several times per week if not on a daily basis. The claimant refused to do so because he did not want to take the Kansas City route as he had to get up early. Even if he left at 3:00 p.m., the latest time the claimant stated he would finish running feed, he would have been back from Kansas City by 8:00 p.m. and while that does make for a long workday, it was not unreasonable, especially given the nature of the business. The claimant was also unwilling to fulfill his responsibility of taking the truck to Omaha for repairs. The employer had a right to expect the claimant would run the truck as much as reasonably possible so it could pay for the expenses of the truck and try to make a profit from it as well. The claimant was not willing to make the effort to insure that happened. Consequently, the employer had little choice but to terminate the claimant's employment and find a driver willing to work the hours required of the job. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The August 14, 2012, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs