

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PAUL H WESTRA**  
Claimant

**APPEAL NO. 09A-UI-06120-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SCHENKER LOGISTICS INC**  
Employer

**OC: 03/29/09**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

Paul Westra filed a timely appeal from the April 15, 2009, reference 01, decision that denied benefits based upon his separation from Schenker Logistics. After due notice, a telephone hearing was scheduled for and held on May 15, 2009. The claimant participated personally. The employer participated by Ms. Nicki Brick, Human Resource Generalist.

**ISSUE:**

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

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony and having considered all of the evidence in the record, finds: The claimant was employed by Schenker Logistics from November 13, 2006 until April 1, 2009 when he was discharged from employment. The claimant most recently held the position of full-time facility maintenance technician and was paid by the hour. His immediate supervisor was Chad Elder.

The claimant was discharged after he informed company management that his driving privileges had been suspended because of an OWI. The company initially considered the matter but informed the claimant on April 1, 2009 that he was discharged from employment.

In his position of facilities maintenance technician the claimant was required to drive company vehicles. Company policy provides that employees who are required to drive company vehicles will be discharged if convicted of OWI. Mr. Westra received a copy of the company handbook containing the employer's policy. No other positions were available to the claimant at the time that he lost his driving privileges.

## REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

In this case the evidence establishes that Mr. Westra's job as a facilities maintenance technician required him to drive company vehicles. Under established company policy employees who lose their driver's privileges due to OWI are subject to discharge if they are required to drive company vehicles. The claimant received a copy of the company handbook and knew or should have known that continuing employment was dependant on the claimant's maintenance of a valid motor vehicle operator's license. Failure to maintain the required licensing showed a disregard of the employer's interests and standards of behavior and thus was disqualifying under the provisions of the Iowa Employment Security Act.

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.

For the reasons stated herein the administrative law judge concludes the employer has sustained its burden of proof. Benefits are withheld.

**DECISION:**

The representative's decision dated April 15, 2009, reference 01, is affirmed. The claimant is disqualified and benefits are withheld until he has earned ten times his weekly benefit, provided that he is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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