

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**JUDD R LANDIS
117 BETSY AVE
BEDFORD PA 15522-1035**

**BARR-NUNN TRANSPORTATION INC
ATTN KATHY
1803 BURROAK BLVD
PO BOX 518
GRANGER IA 50109**

**Appeal Number: 06A-UI-03166-AT
OC: 02/19/06 R: 12
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Judd R. Landis filed a timely appeal from an unemployment insurance decision dated March 10, 2006, reference 01, which disqualified him for benefits. After due notice was issued, a telephone hearing was held on April 10, 2006, with Mr. Landis participating. Safety, Training and Prevention Coordinator Aimee Hanson participated for the employer, Barr-Nunn Transportation, Inc. Claimant Exhibit A and Employer Exhibit One were admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Judd R. Landis was employed as an over-the-road

truck driver by Barr-Nunn Transportation, Inc. from June 29, 2004 until he was discharged February 15, 2006. On January 29, 2006 Mr. Landis was involved in an accident in which his vehicle struck an automobile as he changed lanes. Mr. Landis was issued a citation which he is contesting. As a result of the accident, he received a letter advising him that the company considered the accident preventable and placing him on a six-month probation. The letter advised Mr. Landis that further policy violations or safety issues could lead to discharge. On February 13, 2006 Mr. Landis struck another vehicle as he backed his vehicle into a loading dock at a customer's facility. Damage in the accident came to \$2,134.93. Mr. Landis was discharged because of these two accidents.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with his employment. It does.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

While misconduct is most often found in deliberate actions contrary to the employer's interest, the administrative code specifically provides that it may also be found in repeated acts of carelessness or negligence. The evidence in this record persuades the administrative law judge that Mr. Landis was involved in two instances of carelessness in just over two weeks. The administrative law judge recognizes that Mr. Landis is contesting the citation he received after the first accident. Criminal liability is not an element in determining careless or negligent behavior. From the record, the administrative law judge concludes that the employer has established by a preponderance of the evidence that the claimant was discharged because of repeated acts of careless behavior. Benefits are withheld.

DECISION:

The unemployment insurance decision dated March 10, 2006, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

cs/pjs