

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

LARRY R KIBLER  
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COLUMBIANA OH 44408

BARR-NUNN TRANSPORTATION INC  
ATTN – KATHY  
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GRANGER IA 50109

Appeal Number: 04A-UI-00052-LT  
OC 11-23-03 R 12  
Claimant: Respondent (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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

Employer filed a timely appeal from the December 22, 2003, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on January 29, 2004. Claimant did participate. Employer did participate through Gregg Ryan. Employer's Exhibits One through Four were received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time over-the-road driver through November 26, 2003 when he was discharged. On November 20, 2003, claimant was driving a loaded tractor/trailer leaving the city limits and had completed the transition from a 50 to 55 mph speed zone on a two-lane

highway. Claimant was traveling 55 mph when another vehicle pulled out in front of claimant in a very short distance and immediately stopped in front of him to make a left-hand turn. The other driver had a stop sign on the side road. A citation was issued but is in the process of being challenged.

The other driver got out of the vehicle and walked around at the scene but was checked out at the hospital at her request. The EMS (fire department first responder) who examined her at the scene told people checking out claimant's vitals the other driver had no injuries. The highway patrol officer said the other driver told him that she had just pulled out of the side road. Claimant attempted to reduce his speed to avoid the accident but was unable to given the weight of his loaded vehicle and the short distance in which the other vehicle pulled out in front of him and stopped to turn left. This was the sole reason for the separation.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988).

Claimant's testimony was consistent with his accident report. Because the other driver was taken from the scene in an ambulance is not indicative of injuries as she was walking at the scene and emergency responders are not allowed to deny treatment or transport to a hospital if requested. Given that the other driver pulled out from a stop sign onto a highway in front of claimant's truck, which had the right of way, and then stopped to make a left turn indicates that the accident may have been preventable, but realistically by the other driver, not claimant. This sole incident in a no-win situation is not sufficient to deny benefits.

#### DECISION:

The December 22, 2003, reference 01, decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

dml/kjf