

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER S PARKER
Claimant

APPEAL NO: 11A-UI-13817-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROADSAFE TRAFFIC SYSTEMS INC
Employer

OC: 12/12/10
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The employer appealed a department decision dated October 12, 2011, reference 02, that held the claimant was not discharged for misconduct on September 9, 2011, and benefits are allowed. A telephone hearing was held on November 15, 2011. The claimant participated. Margaret Bennett, Representative/In House Legal Counsel, and Tom Busta, Branch Manager, participated for the employer. Employer Exhibits 1 – 4 were received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on July 29, 2009, and last worked for the employer as a full-time laborer on September 9, 2011. He received the employer policies contained in the Code of Conduct. The policy requires a valid operator's license, as claimant was required to drive as a condition of employment. As to any penalty for violation, the employer reserves the right to terminate due to a serious violation.

Claimant was arrested for DUI on August 28, 2011 while driving a personal vehicle and his blood alcohol test was .14. His license was taken by law enforcement and he was issued a 10-day temporary permit to drive. He notified the employer of his arrest the following day.

When the permit period expired, the Iowa D.O.T. revoked claimant's driving privilege on September 6. The employer denied claimant from operating a company vehicle but allowed him to work until he was terminated on September 9 for violation of company policy as to not having a valid operator's license.

The claimant has received unemployment benefits on his current claim.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 administrative law judge concludes the employer established claimant was discharged for misconduct in connection with employment on September 9, 2011 for a serious violation of company policy.

The claimant knew a valid license was a condition of his employment. His DUI arrest, blood alcohol test of .14 and loss of his driving privilege thru license revocation is a deliberate act that violates company policy and constitutes job disqualifying misconduct.

Iowa Code § 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Since claimant has been disqualified by reason of this decision after receiving benefits, the overpayment issue is remanded to claims for a decision.

DECISION:

The department decision dated October 12, 2011, reference 02, is reversed. The claimant was discharged for misconduct on September 9, 2011. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible. The overpayment issue is remanded.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs