

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMES M NESTERAK**  
Claimant

**APPEAL NO. 09A-UI-07776-E2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BARR-NUNN TRANSPORTATION INC**  
Employer

**Original Claim: 04/19/09  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed an appeal from a representative's decision dated May 18, 2009, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 15, 2009. The claimant participated personally. The employer participated by Aimee Hudson. Exhibits One and A were admitted into evidence.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: The claimant last worked for employer on April 22, 2009. He was an over-the-road truck driver. The claimant was discharged for violation of company policy. The company had changed its policy recently about the steps a driver was to go through with the safety division when taking a loaded truck home. The policy was not reduced to writing and was sent out as a message on the Qualcomm system to truck drivers. The claimant thought he had complied with policy by telling his dispatcher he was going to stop at home before delivering the load. The claimant picked up a load in North Carolina on April 18, 2009 to be delivered to Florida on April 20 at 4:00 a.m. The claimant told his dispatcher he was going home first and then would deliver the load. The employer stated that the dispatcher thought the claimant was delivering the load first and then was going home. The claimant lived in Florida. The claimant expected he would be contacted by the safety division about his home time. The claimant parked his truck at 6:00 a.m. on April 19. He checked on his truck at 3:00 p.m. He went to his truck at 6:00 p.m. and discovered it had been stolen.

## REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The gravity of the incident, number of policy violations, and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or

repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant told his dispatcher he was going home and then was going to deliver his load. The dispatcher did not testify. The credible evidence is the claimant told his dispatcher he was going to stop at home before was going to make his delivery. The conduct of the claimant was not a deliberate disregard of the employer's interest. He thought he had notified his employer about his home status and that the safety division was to contact him. He took reasonable steps to lock and check his truck when it was parked near his home. The claimant thought in good faith he was complying with company policy.

In this matter, the evidence fails to establish that the claimant was discharged for an act of misconduct when he violated employer's policy concerning talking to the safety department when taking a load home.

**DECISION:**

The representative's decision dated May 18, 2009, reference 01, is affirmed. The claimant is eligible to receive unemployment insurance benefits, provided he meets all other eligibility requirements.

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James Elliott  
Administrative Law Judge

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Decision Dated and Mailed

jfe/kjw