

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LOREN SCHROMEN
Claimant

APPEAL NO: 12A-UI-05313-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITED PARCEL SERVICE
Employer

OC: 04/01/12
Claimant: Appellant (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct
871 IAC 24.32 (9) - Suspension/Disciplinary Layoff

STATEMENT OF THE CASE:

Loren Schromen (claimant) appealed an unemployment insurance decision dated April 30, 2012, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from United Parcel Service (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 30, 2012. The claimant participated in the hearing with union representative John Rosenthal. The employer participated through Greg Pavlicek, feeder manager. Employer's Exhibit One was admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer suspended the claimant for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on May 27, 1981 and worked as a full-time feeder driver. A valid driver's license was a condition of employment and the claimant was aware of that fact. He was suspended on March 25, 2012 after he lost his license due to a conviction for operating while intoxicated by drugs or alcohol (OWI). The Iowa Department of Transportation revoked or suspended the claimant's commercial driver's license from May 15, 2012 through May 14, 2013.

The claimant is required to complete a substance abuse program and once he successfully completes that program, he can work inside the hub if work is available. However, he cannot drive again until he has a valid driver's license. The claimant testified that he will be discharged from the substance abuse program today.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined in this matter is whether the claimant's disciplinary suspension and subsequent termination were for disqualifying reasons. When an individual is unemployed as a result of a disciplinary suspension imposed by the employer, the individual is considered to have been discharged and the issue of misconduct must be resolved. See 871 IAC 24.32(9). An individual who was discharged or suspended for misconduct is disqualified from receiving job insurance benefits. See Iowa Code § 96.5-2-a. Misconduct is defined as deliberate actions contrary to the employer's interest. See 871 IAC 24.32(1).

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 claimant was suspended because he lost his commercial driver's license, which was a condition of employment. Where an individual's driving restrictions have been self-inflicted and the individual had reason to know that his driving record was putting his job in jeopardy, the loss of ability to drive can be found to be intentional, and therefore disqualifying misconduct. *Cook v. Iowa Department of Job Service*, 299 N.W.2d 698 (Iowa 1980). The employer has met its burden. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated April 30, 2012, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because he was suspended from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw