

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK R HALVERSON

Claimant

APPEAL NO. 11A-UI-01564-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NATIONWIDE TRANSPORT NE

Employer

OC: 01/09/11

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated February 9, 2011, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on March 10, 2011. The claimant participated personally. Although duly notified, the employer's witnesses Ben Rodgers and Cathey Rice were not available at the telephone numbers provided. Claimant's Exhibit A was received into evidence.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Mark Halverson was employed by Nationwide Transport as an over-the-road tractor trailer driver from December 7, 2010 until December 20, 2010 when he was discharged from employment. Mr. Halverson was employed on a full-time basis and was paid by the mile. His immediate supervisor was his dispatcher.

Mr. Halverson was discharged from Nationwide Transport on December 20, 2010 after the claimant was arrested for suspension of OWI at approximately 1:30 a.m. on the morning of December 19, 2010. At that time the claimant was operating a company over-the-road tractor trailer unit in the state of Ohio and had been stopped by an Ohio state trooper. Mr. Halverson initially underwent a field sobriety test but subsequently refused to provide a breathalyzer test after being arrested.

Upon being informed of Mr. Halverson's arrest Nationwide Transport dispatched another driver to take possession of the company's truck and trailer unit and Mr. Halverson was discharged from employment. The claimant was not provided transportation home by the company. The claimant's driving privileges in the state of Ohio were suspended based upon his refusal to be tested. Subsequently Mr. Halverson pled guilty to OWI and is prohibited from driving in the state of Ohio at the time of hearing.

It is the claimant's position that because other charges against him were "dismissed" his separation from employment should not be disqualifying. It is the claimant's further position that he did not work for Nationwide Transport long enough for his separation from employment with that company to be a disqualifying even in his claim for benefits.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is.

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.

Section 96.7-2a(2)2 provides that the payment of benefits and the charging of the account of employers in the base period shall take place in the inverse chronicle order in which the employment of the individual occurred.

The claimant's discharge from employment took place after Nationwide Transport was informed that Mr. Halverson had been arrested in the state of Ohio and charged with OWI while the claimant was operating a company tractor trailer unit performing services for the company. The company's tractor trailer unit was impounded by law enforcement authorities in the state of Ohio and based upon the claimant's refusal to take a breathalyzer test the claimant faced administrative revocation of his driving privileges in that state. At the time of Mr. Halverson's

arrest the arresting officer smelled "alcohol on the claimant's breath." Individuals possessing commercial driver's license are prohibited from ingesting alcohol immediately prior or during the operation of commercial vehicles. Mr. Halverson's conduct showed a willful disregard for the employer's interests and reasonable standards of behavior that the employer had a right to expect of its employees under the provision of the Iowa Employment Security Law.

Subsequently, Mr. Halverson pled guilty to operating a motor vehicle while impaired and other charges related to his arrest on December 19, 2010 were dropped. The claimant's separation was inextricably tied to his self-inflicted arrest and loss of his driving privileges are disqualifying. Cook v. Iowa Department of Job Service, 299 N.W.2d 698 (Iowa 1980). Benefits are withheld.

DECISION:

The representative's decision dated February 9, 2011, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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