

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM R TRUDE
Claimant

APPEAL NO. 09A-UI-05952-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADM TRUCKING INC
Employer

OC: 03/01/09
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 13, 2009, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on May 13, 2009. Claimant participated. Employer participated through Mike Hammerand. Claimant's Exhibit A was admitted to the record.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as a truck driver and was separated on March 5, 2009 because he is insulin dependent and, as a result, cannot receive his DOT medical card. Without that he is not eligible for a commercial driver's license (CDL) and cannot drive. At the end of August 2008 he was placed on disability leave for six months to get his diabetes under control and attempt to become free of insulin dependence. During and after that time employer had no work available other than driving. He is still in the process of taking steps to undergo a gastric bypass so he can quit taking insulin but that will not happen for at least another six to eight months. In the meantime, he is able to work in factory labor or similar jobs other than commercial driving.

REASONING AND CONCLUSIONS OF LAW:

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

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.

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Employer initiated the separation at the end of the medical disability leave period when claimant was still not allowed a medical card because of his insulin dependence. Since the separation was because of his medical inability to perform his commercial driving job, employer has not established intentional misconduct as a reason for the separation.

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work effective March 1, 2009.

Iowa Code § 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as

defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Because claimant is searching for work as a factory worker and other unskilled employment that does not require a DOT medical card, he has established his ability to work. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The April 13, 2009, reference 01, decision is reversed. The claimant was discharged for no disqualifying reason. He is able to and available for work as of March 1, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs