

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HARDIN C MCCLEESE
Claimant

APPEAL NO. 10A-UI-03561-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RUAN TRANSPORT CORP
Employer

OC: 03/15/09
Claimant: Appellant (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Hardin McCleese, filed an appeal from a decision dated March 8, 2010, reference 02. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on April 27, 2010. The claimant participated on his own behalf. The employer, Ruan Transport, did not provide a telephone number where a witness could be contacted and did not participate.

ISSUE:

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

FINDINGS OF FACT:

Hardin McCleese was employed by Ruan Transport from April, 2009 until October 30, 2009 as a full-time over-the-road truck driver. On October 27, 2009, his dispatcher/terminal manager Tim called and dispatched him for a load on October 29, 2009. During the same call Mr. McCleese was instructed to take the truck to the repair shop in Des Moines, Iowa.

The claimant maintained the truck was not fixed by October 29, 2009, and he was unable to reach anyone in the terminal office to notify the employer he could not take the load. On October 30, 2009, Tim called him and said he was discharged for failing to take the load.

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.

The administrative law judge finds it difficult to believe no dispatchers were available anywhere in the company for the claimant to call to cancel the dispatch because the truck was not fixed yet. It is also difficult to believe the dispatcher did not know the status of the repair on the truck. But the employer did not participate in the hearing to provide any evidence or to rebut the claimant's testimony and has not met its burden of proof to establish the claimant was discharged for misconduct. Disqualification may not be imposed.

DECISION:

The representative's decision of March 8, 2010, reference 02, is reversed. Hardin McCleese is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css