

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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BARR-NUNN TRANSPORTATION INC
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Appeal Number: 06A-UI-01050-SWT
OC: 01/01/06 R: 12
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated January 25, 2006, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on February 14, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. Aimee Hanson participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The claimant worked as a truck driver for the employer from November 6, 2001, to December 7, 2005. The claimant was informed and understood that under the employer's work rules, violation of department of transportation (DOT) hours of service rules and failing to maintain his driving logs properly was grounds for discipline. Under DOT rules, drivers may drive up to 11 hours but then are required to have 10 hours of off-duty time, may be on-duty up to 14 hours

but then are required to have 10 hours of off-duty time, and must not drive after they have been on duty for 70 hours over an eight-day period. The employer's work rules, also prohibit driving over a specified average speed, which is determined by dividing the miles driven on the log by the amount of time taken to cover that distance. On April 22, 2005, the claimant was placed on six-month probation for having more than three violations of these requirements in each of the following months—November and December 2004, and January, February, and March 2005.

Starting in September 2005, the claimant had several violations of the hours of service rules each month. In September, he recorded and drove over the 11-hour limit four times and over the 14-hour on-duty limit twice. In October, he recorded and drove over the 11-hour limit twice and over the 14-hour on-duty limit twice. He also had one time when his average speed was over the limit. In November, he recorded and drove over the 11-hour limit three times and over the 14-hour on-duty limit four times. He also has one instance when he recorded and drove after reaching the 70 hours per eight-day limit. He also had three times when his average speed was over the limit.

The last violations occurred on November 29 and 30 when he continued to drive after being on duty for 14-hours. While some of the log violations were due to unintentional miscalculations, the claimant must have known that he was out of hours to drive on these occasions yet he continued to drive. Both the employer and the claimant could have been issued a citation for violations of DOT rules.

The claimant filed for and received a total of \$1,745.00 in unemployment insurance benefits for the weeks between January 1 and February 4, 2006.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits and was overpaid \$1,745.00 in benefits for the weeks between January 1 and February 4, 2006.

DECISION:

The unemployment insurance decision dated January 25, 2006, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant was overpaid \$1,745.00 in unemployment insurance benefits, which must be repaid.

saw/kjw