

**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**

**ROGER D MCKENZIE
749 W MARY #5
OTTUMWA IA 52501**

**WENGER TRUCK LINES INC
1011 FLORAL LN
PO BOX 3427
DAVENPORT IA 52802-3420**

**Appeal Number: 05A-UI-05529-CT
OC: 05/01/05 R: 03
Claimant: Appellant (1)**

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 for Misconduct

STATEMENT OF THE CASE:

Roger McKenzie filed an appeal from a representative's decision dated May 23, 2005, reference 01, which denied benefits based on his separation from Wenger Truck Lines, Inc. (Wenger). After due notice was issued, a hearing was held by telephone on June 30, 2005. Mr. McKenzie participated personally and offered additional testimony from Edna McKenzie. The employer participated by Percy Bennett, Director of Safety.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. McKenzie was employed by Wenger from August 2,

2004 until October 28, 2005 as an over-the-road driver. He was discharged after he became medically disqualified from driving.

Pursuant to Department of Transportation (DOT) regulations, a driver is disqualified from driving if he tests positive for drugs. Mr. McKenzie was subjected to a random drug test on October 21, 2004. The results were received on October 28 and were positive for marijuana. Mr. McKenzie acknowledged that he had used marijuana within a week before the drug testing. Because of the positive test results, he was disqualified from driving and, therefore, was discharged from the employment.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. McKenzie was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. McKenzie was discharged because he was medically disqualified from driving pursuant to DOT rules after he tested positive for drugs. He does not dispute that he had used illicit drugs. Where an individual's own conduct renders him unemployable by his employer, he is guilty of misconduct within the meaning of the law. See Cook v. Iowa Department of Job Service, 299 N.W.2d 698 (Iowa 1980).

Mr. McKenzie knew or should have known that using illicit drugs was contrary to the employer's expectations. It was his voluntary drug usage that resulted in a positive test and, consequently, his disqualification from driving. Inasmuch as it was his own conduct that resulted in Wenger being unable to continue the employment, he is guilty of misconduct and disqualified from receiving job insurance benefits.

DECISION:

The representative's decision dated May 23, 2005, reference 01, is hereby affirmed. Mr. McKenzie was discharged by Wenger for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/sc