

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BANDELE O EZEKIEL
Claimant

APPEAL NO. 10A-UI-00403-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST SIDE TRANSPORT INC
Employer

OC: 12/06/09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Bandele Ezekiel (claimant) appealed a representative's December 31, 2009 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with West Side Transport (employer) for conduct not in the best interest of the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 17, 2010. The claimant participated personally. The employer participated by Susan Smith, Director of Driver Services; Tim Whitney, Director of Safety; and Tyren Harrelson, Fleet Manager.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on March 28, 2007, as a full-time over-the-road driver. The claimant signed for receipt of the employer's handbook on March 26, 2007. The employer issued the claimant verbal warnings on May 6 and August 18, 2008, for delivering late loads. On March 25, 2009, the employer issued the claimant a written warning for delivering a late load. On June 29, 2009, the employer issued the claimant a verbal warning for yelling at co-workers. The employer notified the claimant that further infractions could result in termination from employment.

On November 10, 2009, the employer dispatched the claimant to take a load from Georgia to New Jersey. The claimant told the employer he was ill and could not work that day. The employer told the claimant that the load would be changed to November 11, 2009. The claimant was to pick up the load in Georgia on November 11, 2009, and deliver it to New Jersey on November 13, 2009, at 3:00 a.m. The employer telephoned the claimant three times the morning of November 11, 2009. The employer left a message the first time and talked to the claimant the last two times. The last two times the claimant said he was on his way to the truck. The claimant finally picked up the load in Georgia at 5:00 p.m. on November 11, 2009.

The claimant took the load to his home in Tennessee rather than proceeding to New Jersey. The employer called the claimant at approximately 10:00 a.m. of November 12, 2009, and asked why the truck was not running. The claimant started the truck before noon and delivered the load to another driver in Virginia. The employer terminated the claimant on November 16, 2009.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's December 31, 2009 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css