

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVEN L ATKINS
Claimant

APPEAL NO. 09A-UI-08089-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

BARR-NUNN TRANSPORTATION INC
Employer

**Original Claim: 4/26/09
Claimant: Appellant (2)**

Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated May 28, 2009, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 23, 2009. The claimant participated. The employer participated by Wendy Noring, workers' compensation coordinator and human resources. The record consists of the testimony of Wendy Noring, the testimony of Steven L. Atkins, and Employer's Exhibits 1 through 4.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant was hired as a full-time over-the-road trucker on April 1, 2008. On July 25, 2008, July 28, 2008, and October 23, 2008, the claimant delivered his load late. As a result, he was placed on probation from August 5, 2008 through November 3, 2008. The letter informing the claimant of his probation indicated any violations of company policy during this probationary period would result in further disciplinary action up to and including termination.

On February 17, 2009, the claimant delivered a load late by 15 minutes. The claimant did not have accurate information on the number of miles for the trip and, as a result, he was late. This late delivery led to his termination on March 2, 2009. The termination was based on the previous late loads as well as the late load on February 17, 2009. The claimant was not on probation at the time of his termination.

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies a claimant from receiving unemployment insurance benefits. Misconduct is limited to willful or wanton disregard of an employer's interests. In a case like this, there must be carelessness or negligence of such a degree of recurrence before there can be a determination of intentional and substantial disregard of the employer's interests. Mere inefficiency or failure in good performance is not misconduct.

The evidence in this case does not show the requisite willful or wanton disregard of the employer's interests. The employer did have a reasonable expectation that the claimant would deliver his loads on time and it is true that the claimant did not do that on four occasions. However, the claimant's failure to deliver his loads on time appears to be due to isolated examples of negligence and inefficiency. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The representative's decision dated May 28, 2009, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw