

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID SKEEN
Claimant

APPEAL NO. 10A-UI-09804-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MID CONTINENT TRUCKING CO
Employer

OC: 05/30/10
Claimant: Respondent (2/R)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Mid Continent Trucking Company (employer) appealed an unemployment insurance decision dated July 1, 2010, reference 01, which held that David Skeen (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 30, 2010. The claimant participated in the hearing. The employer participated through Paul Cromwell, Safety and Risk Manager. Employer's Exhibits One, Two, and Three were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time over-the-road truck driver from August 1, 2008 through June 4, 2010, when he was discharged. The employer had issued the claimant numerous written warnings addressing multiple violations stemming from the claimant's logs. Three warnings were issued on April 21, 2010, and the claimant signed them. The employer was responsible for ensuring the claimant complied with the Federal Motor Carrier Safety Administration regulations and these warnings showed the claimant's failure to comply. His continued violations subjected the employer to financial sanctions.

The first warning addressed violations from December 9, 2009 through December 23, 2009. There were 15 violations, which were mostly falsification, and at least one was considered a critical violation. The second warning covered four violations from January 5, 2010 through January 29, 2010, and one of those was a serious violation. The third warning included 16 violations from February 3, 2010 through February 28, 2010, and he had another serious violation.

Two more warnings were issued to him, but he failed to sign these and return them to the employer. The first one covered 30 violations from April 1, 2010 through April 30, 2010 and the second one covered 32 violations from May 1, 2010 through May 31, 2010. The claimant's violations should

have been decreasing, but they were increasing. He was aware of the rules and regulations, as can be seen by his receipt and acknowledgement of the information.

The final incident occurred on June 3, 2010, when the claimant was in the shop getting his truck fixed. He began to argue with one of the owners of the company. He claimed that the employer was running illegally and that he was going to report it to the Department of Transportation. The altercation became heated and the claimant stepped towards the owner and the owner grabbed his shirt. He let go of the claimant's shirt shortly thereafter and walked away. The claimant was subsequently discharged for insubordination and repeated failure to follow the employer's directives.

The claimant filed a claim for unemployment insurance benefits effective May 30, 2010 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged on June 4, 2010 for insubordination and a repeated failure to follow the employer's directives. He argued with the employer and repeatedly failed to follow federal regulations, as can be seen on the summaries of his driver's logs. The

claimant contends that the employer was “running illegally,” but he was responsible for knowing and informing the employer of his status and where he was with his hours. The claimant’s log violations were increasing when they should have been decreasing, and his altercation with the employer was the final straw. The employer has met its burden. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant’s separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency’s initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated July 1, 2010, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits, because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw