

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENNETH C LANGDON JR
Claimant

APPEAL NO. 07O-UI-06683-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BARR-NUNN TRANSPORTAITON INC
Employer

OC: 04/08/07 R: 12
Claimant: Respondent (2)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated May 10, 2007, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on July 24, 2007. The claimant participated in the hearing. Aimee Hanson participated on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as an over-the-road truck driver from August 25, 2005, to April 9, 2007. The claimant was informed and understood that under the employer's work rules, drivers are prohibited from having unauthorized passengers in their trucks. The rules permit a driver to submit a rider authorization form to management for approval. The rule is in place for safety and liability issues, as the employer needed to know about passengers for insurance purposes. The rider authorization form allows a passenger to ride in a truck for up to 30 days and can be renewed for additional periods of time.

At the end of March 2007, the claimant's wife began riding as a passenger in his truck. He did not submit a rider authorization for approval. He did not ask anyone in management what he needed to do in order to have a passenger in the truck.

In early April 2007, the safety manager received a report that the claimant's wife was riding in the claimant's truck and was unloading freight. While the report that the claimant was unloading freight was not accurate, the claimant admitted that he had not sought or received approval from management for his wife to ride with him. He asserted that he had talked to another driver who told him that nothing had to be done for a passenger to ride in the truck.

The claimant filed for and received a total of \$1,809.00 in unemployment insurance benefits for the weeks between April 8 and May 19, 2007.

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.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. The preponderance of the credible evidence establishes that the claimant was aware of the requirement of obtaining approval before a passenger was allowed to ride in the truck but disregarded the requirement.

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.

DECISION:

The unemployment insurance decision dated May 10, 2007, 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 \$1,809.00 in unemployment insurance benefits, which must be repaid.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw