

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID J SINNWELL
Claimant

APPEAL NO: 12A-UI-09703-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

INTERSTATE BRANDS CORP
Employer

OC: 07/15/12
Claimant: Respondent (2/R)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's August 3, 2012 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because he had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Cheryl Rodermund, a TALX representative, appeared on the employer's behalf. Mike Livingood and Marshall Tolly testified on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in December 2007. He worked as a full-time district manager. Part of the claimant's job required him to train new employees. Prior to July 10, the claimant's job was not in jeopardy.

The claimant knew and understood the employer required employees to wear seat belts when driving or riding in a company vehicle. The company truck had seat belts for the driver and the jump seat in the front. The policy informs employees that a violation of the seat belt policy will result in discipline, up to and including termination.

Prior to July 10, the claimant asked for time off because he was burned out. The claimant was working 80 hours a week driving his route, completing paperwork and training new employees. The employer could not grant him time off when the claimant requested it.

The claimant drove to the city where he was to train a new employee on July 10. The claimant stayed in a hotel the evening of July 9. The claimant trained a new employee on July 10. The new employee was driving the route. The claimant was very tired and the jump seat was very uncomfortable. The claimant was tired and to get some sleep, he went in the back of the truck to sleep. He did not have a seat belt on when he was in the back of the truck.

The employer learned the claimant did not wear a seat belt when the trainee employee drove. The employer talked to the claimant on July 12 and the claimant acknowledged he violated the employer's seat belt policy. The employer suspended the claimant on July 13 and discharged him on July 19 for violating the employer's seat belt policy.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant's decision to knowingly violate the employer's seat belt policy because he was tired and the jump seat was extremely uncomfortable when he was training a new employee amounts to an intentional and substantial disregard of the standard of behavior the employer has a right to expect from a district manager in charge of training new employees. Even though the jump seat was uncomfortable, the claimant made a decision to sleep without a seat belt instead of sleeping in the uncomfortable jump seat that had a seat belt. The claimant committed work-connected misconduct. As of July 15, 2012, the claimant is not qualified to receive benefits.

The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment will be remanded to the Claims Section to determine.

DECISION:

The representative's August 3, 2012 determination (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of July 15, 2012. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

This issue of overpayment and whether the claimant is eligible for a waiver of any benefits he has received since July 15, 2012, is **Remanded** to the Claims Section to address both issues.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css