

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DALE A DEVINE
Claimant

APPEAL NO. 10A-UI-01625-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BARR-NUNN TRANSPORTATION INC
Employer

**Original Claim: 12/27/09
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed a representative's January 27, 2010 decision (reference 01) that concluded the claimant was qualified to receive benefits and the employer's account was subject to charge because the claimant had been discharged for non-disqualifying reasons. A telephone hearing was held on March 11, 2010. The claimant participated in the hearing. Shari Proehl, the chief financial officer, appeared on the employer's behalf. 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:

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

FINDINGS OF FACT:

The claimant started working for the employer on June 5, 2007. The employer hired the claimant to work as a full-time over-the-road truck driver. Before the employer hired the claimant, the claimant had received a traffic ticket on August 23, 2006 for failing to obey a traffic control device. The claimant was driving his personal vehicle when he received the 2006 ticket. The employer's policy informs drivers they can be disciplined or terminated for any accident.

On December 28, 2009, the claimant was in the process of making a left-hand turn in Michigan. The claimant was in an intersection, when a driver could not stop because of snow and slid into the claimant's truck. The driver hit the claimant's truck. The police officer who investigated the accident gave the claimant a ticket for failing to yield because the claimant was in the intersection. On December 29, the employer discharged the claimant for being involved in a preventable accident. Since the claimant received a traffic ticket, the employer concluded the accident was preventable.

The claimant challenged the traffic ticket. The ticket was dismissed by the district attorney in early or mid February, before the case went before a judge.

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 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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established business reasons for discharging the claimant. The evidence does not, however, establish that the claimant was negligent or careless to the extent that he committed work-connected misconduct that resulted in the December 28, 2009 accident. The employer determined the claimant was involved in a preventable accident because he received a traffic citation for failing to yield. The employer admitted that if the other driver had received the ticket, the claimant would not have been discharged. The employer did not know what the employer would have decided if no one had received a ticket on December 28, 2009. In this case, the ticket issued for failing to yield was dismissed by the district attorney before the case went before a judge. The dismissal of the ticket supports the conclusion that the claimant did not commit work-connected misconduct. Therefore, as of December 27, 2009, the claimant is qualified to receive benefits.

DECISION:

The representative's January 27, 2010 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of December 27, 2009, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw