

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAUL A JACOBSON
Claimant

APPEAL NO: 07A-UI-05199-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IA DEPT OF TRANSPORTATION
Employer

**OC: 04/08/07 R: 03
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Paul A. Jacobson (claimant) appealed a representative's May 10, 2007 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Iowa Department of Transportation (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 7, 2007. The claimant participated in the hearing. Malia Maples, a representative with TALX, appeared on the employer's behalf. Mark Black, the district maintenance manager, testified on the employer's behalf. During the hearing, Employer Exhibits One through Five were offered and admitted as 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:

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

FINDINGS OF FACT:

The claimant started working for the employer on December 28, 1998. The claimant worked as a full-time equipment operator. Robert Edgar supervised the claimant. The claimant understood his job required him to possess a valid driver's license and a commercial driver's license.

On October 28, 2006, the claimant was charged with an OWI during off duty hours. The employer knew about the charge. The claimant continued working because he still had his driver's license and a commercial driver's license. On March 2, 2007, the employer learned the claimant would lose his driver's license for six months and would lose his commercial driver's license for one year. The claimant did not lose his commercial driver's license until April 6, 2007. (Employer Exhibit Three.)

After the employer learned the claimant was losing his driver's licenses, the employer did not allow the claimant to drive any of the employer's equipment. The claimant continued working as

long as the employer had work for the claimant to do that did not involve driving any equipment. (Employer Exhibit Four.)

In accordance with the union contract, the claimant asked the employer for an unpaid leave of absence for a year. The employer denied this request. The employer's policy does not allow the employer to accommodate an employee who loses a driver's license for more than six months. (Employer Exhibit One.) The employer discharged the claimant on April 5, 2007, because as of April 6 he would no longer possess the necessary driver's licenses that were required for his job. (Employer Exhibit Five.)

The claimant established a claim for unemployment insurance benefits. Since filing for benefits, the claimant has looked primarily for work in a factory.

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 section 96.5-2-a. 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 claimant knew and understood his job required him to possess a valid driver's license and a valid commercial driver's license. When the claimant engaged in off-duty conduct that jeopardized his driver's licenses, he intentionally and substantially disregarded the standard of behavior the employer had a right to expect from an employee. The employer discharged the claimant for work-connected misconduct when he operated a vehicle while under the influence which led to the loss of his driver's license and commercial driver's license. After losing his driver's licenses, the employer was not required to accommodate the claimant or even grant him an unpaid leave of absence. Under the facts of this case the employer discharged the claimant for reasons constituting work-connected misconduct. As of April 8, 2007, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's May 10, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is

disqualified from receiving unemployment insurance benefits as of April 8, 2007. 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.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs