

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**GAROLD L REESER**  
Claimant

**DOHRN TRANSFER COMPANY**  
Employer

**APPEAL NO. 14A-UI-10526-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/14/14**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated October 6, 2014, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on October 29, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Sally Jackson participated in the hearing 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 a truck driver from May 2012 to the end of March 2013. He was informed and understood that under the employer's work rules, he was required to maintain a valid commercial driver's license (CDL) to be employed.

Starting at the end of March 2013, the claimant was off work receiving workers' compensation benefits due to a work-related injury that he suffered in January 2013. The claimant continued to receive workers' compensation benefits temporary total disability benefits and permanent partial benefits into 2014.

The claimant was arrested and charged on May 23, 2013, with operating a vehicle while intoxicated (OWI). The arrest occurred while the claimant was driving his personal vehicle while he was off-duty and not working due to his workers' compensation injury. The claimant properly reported the arrest and charge to the terminal manager and told him that he was fighting the charges because he did not believe he was guilty of OWI.

The claimant appealed the administrative suspension of his license. As a result, the suspension of his license was stayed effective June 3, 2013, pending final administrative action.

On June 6, 2013, the human resources director sent a letter of termination to the claimant. In the letter, she stated:

You received an OWI in your personal vehicle on or about May's 23, 2013. You have now lost your abilities to drive a commercial motor vehicle.

Parts 383 and 391 of the Federal Motor carrier safety regulations both contain offenses for which drivers must be disqualified from driving. No employer may knowingly allow a driver to operate a commercial motor vehicle (CMV) if the driver has lost his/her privilege to operate a CMV, or who has been disqualified from operating a CMV. Section 383.51 requires states to disqualify drivers for certain offenses that occur in non-CMV's, in addition to CMV-related violations.

Iowa code allows for a temporary license for 10 days following an OWI and that time has now expired. As a professional truck driver, you are required to maintain your CDL and since it has now been revoked, you no longer meet the qualifications of your position. Therefore, your employment is terminated effective immediately.

As of June 6, 2013, the claimant had not lost his privilege to drive a personal or commercial vehicle. He had a valid driver's license and CDL by virtue of the stay pending the outcome of final administrative action, which occurred on October 6, 2013, with a suspension effective approximately a month later. He was not convicted of OWI until October 18, 2013.

#### **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.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Iowa Code § 96.6-2; Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (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 substantial and 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).

The law requires me to first determine why the claimant was discharged and then decide if that reason was for work-connected misconduct. The letter sent by the human resources director makes it clear that the claimant was discharged because the employer believed that the claimant did not have a valid CDL.

The DOT rules cited by the employer disqualify a driver if upon **conviction** of one of the listed offense, which does included driving an non-commercial motor vehicle "under the influence of

alcohol as prescribed by State law.” 49 CFR 383.51(a)(3) & (b)(1). At the point, the employer discharged the claimant, he had not been convicted of OWI.

The DOT rules also disqualify a driver who has lost the privilege to operate a commercial motor vehicle by reason of the revocation or suspension of an operator's license. 49 CFR 391.15(b). The state determines whether the driver has lost the privilege to operate a commercial motor vehicle. Under Iowa rules, 761 IAC 615.38(5), a timely appeal from administrative action to suspend or revoke a driver's license operates as a stay of the suspension or revocation. The notice of stay issued by the Iowa Department of Transportation “allows the person to drive while the sanction is stayed.” 761 IAC 615.38(5)(a)1. The Iowa website explains that the person's driving privileges will remain in the status previously held at the time the Iowa DOT issued the sanction that was appealed. <http://www.iowadot.gov/mvd/ods/appeal.html>.

This means that the claimant had a valid CDL and had the privilege to operate a commercial vehicle at the point he was discharged. The employer erroneously believed the claimant was not legally able to drive. While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established.

**DECISION:**

The unemployment insurance decision dated October 6, 2014, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs