

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALFRED L NAST
Claimant

APPEAL NO: 14A-UI-12502-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

BARR-NUNN TRANSPORTATION INC
Employer

OC: 11/02/14
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 24, 2014, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 29, 2014. The claimant participated in the hearing. Dan Inman, Safety Claims and Prevention Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time over-the-road truck driver for Barr-Nunn Transportation from March 10, 2011 to October 24, 2014. He was discharged for accumulating five violations in two years and seven months.

The employer's policy states that if an employee receives five moving warnings in four years, termination will occur. On March 18, 2012 the claimant received a warning from law enforcement in Ohio for traveling 62 miles per hour in a 55 mile per hour zone. On May 14, 2012 he was cited in Ohio for using the left lane in a two and one-half mile long construction zone with signs that stated trucks needed to use the left lane. The claimant was in the right lane and as he got closer to the construction zone he did not move over. There was a sign when he got to the construction zone that stated "Stay in Lane." The claimant was ticketed for failing to move to the left lane. On July 10, 2012 he received a violation for following too closely in a weigh station. Usually there are signs telling drivers to maintain a distance of 100 feet but there were none at that weigh station. There was a bypass lane at the weigh station where the trucks could drive over the scale through the weigh station without stopping. When the trucks get to the scale house the drivers start accelerating to get back on the interstate. The claimant moved up on the driver in front of him while trying to gain speed to reenter the interstate and he was stopped by a weigh station officer a short distance away and cited for following too closely. He estimates he was 20 feet behind the driver in front of him. The rule is usually to maintain 100 feet between trucks. The employer placed the claimant on probation and he was not eligible for bonuses, safety pay, or raises for six months. On September 10, 2014 he received a

camera ticket in Illinois for a red light violation. It occurred at 3:30 a.m. on a very rainy morning and the lights ran on a trip system so when a vehicle approached from another direction the light changes. The claimant saw a car approach the intersection just before he got to the intersection and the light turned yellow but he felt he was at the point of no return where it would be more dangerous for him to hit the brakes and try to stop then to continue through the intersection with the light yellow and then red. On October 17, 2014 in Rhode Island, the claimant was in the third lane and that jurisdiction does not allow tractor/trailers to operate in the third lane. The claimant had been in the second lane but then an entrance ramp turned into a lane which meant the claimant was in the third lane. The traffic was heavy and while he tried to change lanes and return to the second lane he could not get over before a state trooper pulled him over and wrote him a violation. He had driven that route many times before and was familiar with how the lanes change but was unable to get over on that occasion because of the traffic. He reported the situation to the employer by fax approximately one hour later from a truck stop.

The employer's policy states that drivers who exceed five moving violations within a four-year time span, will have their employment terminated. Consequently, the employer notified the claimant of his discharge from employment October 24, 2014 and bought him a bus ticket home. The claimant was aware his job was in jeopardy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Dep't of Job Serv., 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts of omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The claimant had been a truck driver for at least 30 years and while some of these incidents appear to almost be a consequence of bad luck, the claimant was aware of all of the rules of the road and familiar with the routes he was driving. He knew, for example, the speed limit in the Ohio location where he received the speeding ticket, that the trucks were supposed to stay in the left lane in the Ohio construction zone, that he should maintain at least 100 feet between trucks in the weigh station and agrees it is a good policy, and that the entrance lane in Rhode Island turns into a regular lane after traveling so many feet down the interstate.

He had five violations in two years and seven months, thus violating the employer's policy prohibiting drivers from accumulating five violations in four years. While the claimant takes responsibility for his actions, a refreshing quality appreciated by the administrative law judge, it does not eliminate the fact that the claimant committed these violations, despite knowing his job was in jeopardy.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits must be denied.

DECISION:

The November 24, 2014, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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