

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK W TAPPAN

Claimant

APPEAL NO. 08A-UI-10540-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA

Employer

**OC: 09/21/08 R: 03
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated October 31, 2008, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on December 11, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. David Bergeon participated in the hearing on behalf of the employer with a witness, Suzanne Hilleman. Exhibits One through Four were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as an equipment operator in the facilities management, building and landscape services department from September 13, 1982, to September 25, 2008. The claimant was informed and understood that he was required to possess a valid commercial driver's license (CDL) for his job.

On September 8, 2008, the claimant was driving his personal vehicle outside of working hours. He was out late the night before at his son's bachelor party and was involved in an accident. He was arrested and charged with operating a vehicle while intoxicated (OWI). His license to drive and his commercial driver's license were revoked. The weight of the evidence shows the claimant was under the influence of alcohol while driving, which led to his arrest and license revocation.

After the manager of landscape services, Mark Fekkether, learned of the claimant's OWI charge and license revocations, he notified the claimant on September 15, 2008, that the status of his university driving privileges was being reviewed by the university's risk management department. He was informed that the review normally took about ten days and if his university driving privileges were revoked, his employment with the university would end, since the facilities management department could not identify any long-term work accommodation that

would allow him to maintain his equipment operator position. He was informed that he was not allowed to drive any equipment but could perform ride-along duties on the garbage truck route.

On September 24, 2008, the university risk management office notified the claimant and his supervisor that his driving record was not in compliance with the university driving standards because he did not have a valid driver's license.

On September 24, 2008, the employer discharged the claimant based on the university risk management office's determination that he could not drive university vehicles and did not possess a valid CDL as required under his job description.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for a current act of 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 Iowa Supreme Court has ruled that off-duty misconduct may constitute work connected misconduct under the unemployment insurance law if the conduct deliberately violates the employer's work rules. Kleidosty v. Employment Appeal Board, 482 N.W.2d 416, 418 (Iowa 1992). Although the court concluded that violating a work rule was a sufficient condition to prove "work-connected" misconduct, common sense dictates there must be some connection between the off-duty conduct and the employment, even if the employer has a rule prohibiting the conduct. The off-duty conduct would not be "misconduct in connection with the individual's employment," unless the employer establishes some harm or potential harm to its interests from the conduct beyond the fact that a rule was violated. See In re v. Kotrba, 418 N.W.2d 313, 316 (S.D. 1988); Nelson v. Department of Employment Security, 655 P.2d 242 (Wash. 1982).

The evidence supports the conclusion that an off-duty driving offense would have a connection with a job for which driving commercial vehicles and having a valid CDL were stated job requirements. There is an obvious harm to the employer when an employee commits an act, even while off duty, that jeopardizes his ability to perform his normal job duties. Although I have not found any reported Iowa cases directly on point regarding the loss of a driver's license, the Iowa Supreme Court in Cook v. Iowa Department of Job Service, 299 N.W.2d 698 (Iowa 1980), ruled that a delivery driver who was dismissed because he lost his insurability due to repeated traffic violations was discharged for work-connected misconduct. In a case with facts similar to this case, Markel v. City of Circle Pines, 479 N.W.2d 382 (Minn. 1992), the Minnesota Supreme Court ruled that where an employee's job requires a valid driver's license, the employee's loss of that license as a result of driving while intoxicated constituted misconduct disqualifying him from the receipt of unemployment compensation benefits.

The decision in Markel is persuasive authority. The claimant drove his personal vehicle while intoxicated and put his driver's license, which was a stated job requirement, in jeopardy.

Work-connected misconduct as defined by the unemployment insurance law has been established.

DECISION:

The unemployment insurance decision dated October 31, 2008, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw