

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CLIFFORD DUSENBERRY**  
Claimant

**APPEAL NO. 13A-UI-14110-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BEN SHINN TRUCKING INC**  
Employer

**OC: 11/17/13  
Claimant: Appellant (1)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

**STATEMENT OF THE CASE:**

Clifford Dusenberry (claimant) appealed an unemployment insurance decision dated December 12, 2013, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Ben Shinn Trucking, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 16, 2014. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which he could be contacted, and therefore, did not participate. The employer participated through Amber Schlangen, Safety Supervisor.

**ISSUE:**

The issue is whether the claimant was discharged for work-related misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time truck driver from March 9, 2010 through November 13, 2013 when he was discharged for repeated negligence. He was required to inspect his truck and the load prior to leaving with it but regularly failed to do this. Consequently, when he was stopped by the Department of Transportation (DOT) for a driver inspection report, he received citations or was even taken out of service for a period of time. During the claimant's employment, he had a total of 20 incidents, which is well above what other drivers incurred.

The final incident occurred on November 6, 2013 when the claimant was stopped. He was taken out of service for failing to retain seven days records of duty status and having insufficient tie downs to prevent movement of the load. He could only continue working after correcting these deficiencies, which took several hours.

Prior to that, the employer received a driver complaint about the claimant on August 22, 2013 when he pulled out in front of someone. He received six citations after he was stopped on July 2, 2013 and these citations included failing to maintain his logs, operating a commercial

vehicle with an expired commercial driver's license and failing to have the proper tie downs and reflective material or lamps. The employer issued warnings each time the claimant received a citation. Typically a driver is stopped and after the inspection, the driver continues without incident.

DOT citations were issued to him in 2013 for multiple problems on January 14, February 13, March 22 and April 5. Warnings were issued each time and they were all issues that should have been corrected prior to going out on the road.

**REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on November 13, 2013 for repeated negligence. Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v Iowa Department of Job Service*, 391 N.W.2d 731 (Iowa App. 1986). The claimant's failure to properly inspect his loads and failure to accurately keep his driver's logs show a deliberate disregard of the employer's interests. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

**DECISION:**

The unemployment insurance decision dated December 12, 2013, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs