

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GERARDO RIOS
Claimant

EMCO TRANSPORTATION LLC
Employer

APPEAL 24A-UI-04911-PT-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/21/24
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant, Gerardo Rios, filed an appeal from a decision of a representative dated May 9, 2024, (reference 01) that held the claimant ineligible for unemployment insurance benefits after a separation from employment. After due notice, a telephone hearing was held on June 7, 2024. The claimant participated personally. The employer, EMCO Transportation LLC, participated through Owner Emin Puric and Operations Manager Anis Cusurovic. The administrative law judge took official notice of the administrative record.

ISSUE:

Whether the claimant was discharged for disqualifying, job-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant began working for EMCO Transportation LLC as a full-time over-the-road truck driver on January 27, 2023. The claimant was separated from employment on April 22, 2024, when he was discharged.

As an over-the-road truck driver, the claimant was responsible for inspecting his truck, picking up loads of products from Oklahoma, and transporting those products to a distribution center in Iowa. The claimant's job duties involved substantial daily driving in a company semi-truck. One of the employer's policies requires all truck drivers to maintain a valid, unencumbered commercial driver's license (CDL). Employees are prohibited from driving their semi-truck if their CDL is suspended or expired. The claimant was aware of the employer's work rules and policies and he knew that failing to maintain his license would result in termination of his employment.

To maintain a valid CDL, all drivers must undergo an annual physical examination and then submit a copy of their medical card to the Department of Motor Vehicles (DMV). Sometime in the winter or spring of 2024, the claimant was required to have his annual physical examination. At least 30-days prior to his license being suspended, the employer contacted the claimant, instructed him to schedule a physical exam, and told him to send his updated medical card to the DMV. The claimant underwent a physical examination, but he did not send his updated

medical card to the DMV. For this reason, sometime in March or April of 2024, the Iowa Department of Transportation suspended the claimant's CDL.

On April 12, 2024, the claimant was returning from Oklahoma with a load of products when he was pulled over for speeding by an Iowa State Trooper. While reviewing the claimant's information, the officer noticed that the claimant's CDL was suspended because he had not submitted his medical card to the DMV. Because the claimant's CDL was suspended, the officer informed the claimant that his vehicle was "out of service" until he resolved the issue with his CDL. The officer escorted the claimant to a truck-stop and then the officer left.

After the officer left, the claimant called and informed his safety manager that he had been pulled over for speeding. During the call, the claimant did not inform the safety manager that his CDL was suspended and his truck had been put "out of service." The claimant then drove back to the distribution center in Waterloo.

When the claimant returned to Waterloo, he provided the employer a copy of the citation he received from the State trooper. When the employer asked the claimant about driving on a suspended license, the claimant said that he had called the Iowa DOT after being pulled over, sent them a copy of his medical card, and that a DOT employee told him he could continue driving. The employer was suspicious of the claimant's story, but wanted to investigate the incident further. The claimant then left and went on a 10-day vacation.

While the claimant was on vacation, the employer checked the status of the claimant's CDL and discovered that it was still suspended for failing to provide his medical card to the DMV. On April 24, 2024, the employer called and informed the claimant that his employment was being terminated effective immediately because he had illegally driven his semi-truck while on a suspended license and because the claimant was not currently able to perform the duties of his position under Iowa law.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 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 Code section 96.5(2)d(14) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

d. For the purposes of this subsection, “*misconduct*” means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee’s contract of employment. Misconduct is 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. Misconduct by an individual includes but is not limited to all of the following:

...

(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

...

(11) Failure to maintain any licenses, registration, or certification that is reasonably required by the employer or by law, or that is a functional requirement to perform the individual’s regular job duties, unless the failure is not within the control of the individual.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep’t of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

The issue is not whether the employer made a correct decision in separating the claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep’t of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be “substantial.” *Newman v. Iowa Dep’t of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). 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 Bd.*, 616 N.W.2d 661 (Iowa 2000).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness’s testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness’s appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness’s interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how I have resolved the disputed factual issues in this case. After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above and using my own common sense and experience, the administrative law judge finds the employer’s testimony concerning the claimant’s awareness of the work rules, his communication with the employer, and the status of his CDL to be more credible than the claimant’s testimony regarding those issues. The claimant’s testimony was at times unclear and inconsistent with other believable evidence, particularly concerning his

alleged phone call with the Iowa DOT. For this reason, the administrative law judge has given greater weight to the employer's version of events than to the claimant's version of events.

The employer terminated the claimant's employment because the claimant failed to maintain his commercial driver's licenses, a known condition of his employment, and because the claimant drove the employer's semi-truck while his license was suspended. Repeated traffic violations rendering a claimant uninsurable can constitute job misconduct even if the traffic citations were received on the claimant's own time and in his own vehicle. *Cook v. Iowa Dep't of Job Serv.*, 299 N.W.2d 698 (Iowa 1980). The employer is not obligated to accommodate the claimant during a license suspension or revocation period, but does have a legal obligation to abide by state and federal transportation safety statutes and regulations and not allow unlicensed individuals to drive. While the license suspension issue was not directly related to the claimant's work, the claimant's failure to maintain a valid, unrestricted commercial driver's license as a known condition of the employment, as well as his decision to drive the employer's vehicle while his license was suspended, was misconduct sufficient to warrant a denial of benefits.

DECISION:

The May 9, 2024, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged for substantial, job-related misconduct. Unemployment insurance benefits funded by the State of Iowa are denied until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount after the April 22, 2024, separation date, and provided he is otherwise eligible.



Patrick B. Thomas
Administrative Law Judge

June 14, 2024
Decision Dated and Mailed

pbt/scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.