

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ED MOORE

Claimant

APPEAL NO: 07A-UI-06638-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BARR-NUNN TRANSPORTATION INC

Employer

**OC: 06/03/07 R: 12
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Ed Moore (claimant) appealed an unemployment insurance decision dated June 20, 2007, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Barr-Nunn Transportation, 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 July 23, 2007. The claimant participated in the hearing. The employer participated through Aimee Hanson, Safety Claims Supervisor. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant 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 over-the-road truck driver from August 29, 2002 through April 27, 2007. He was required to have a valid commercial driver's license (CDL) as a condition of employment. The employer ran the claimant's motor vehicle record on January 10, 2007 and discovered his CDL was suspended. The claimant has a ten year mandatory requirement of carrying SR22 insurance and his license was suspended for non-payment of the insurance. The claimant paid his insurance and his CDL was reinstated on January 11, 2007. He was given a warning and advised he had to have a valid CDL at all times to carry out the essential functions of his position.

The employer ran another check on the claimant's motor vehicle record on April 26, 2007 and learned that his CDL was again suspended. The employer contacted the state of Ohio who reported that the claimant's CDL had been suspended since February 14, 2007 and notification was sent to his address on February 20, 2007. The claimant was notified and claims he was unaware his CDL had been suspended. The employer advised him he could not operate the tractor/trailer without a valid CDL. The claimant paid his insurance and had his CDL reinstated so the employer allowed him to return the tractor-trailer back to Ohio. Although the claimant's

CDL was reinstated at the time of discharge, it was the second suspension within four months and the claimant was discharged on April 27, 2007.

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 section 96.5-2-a.

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.

871 IAC 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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for failure to have a valid CDL two times within a four month period. A valid CDL was a job requirement and it was the claimant's responsibility to ensure his CDL was valid. He had been warned in January 2007 but failed to pay his insurance the very next month and had been driving illegally since February 14, 2007. His actions could have resulted in serious legal liability for the employer. The claimant's failure to maintain a valid CDL was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. 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 June 20, 2007, 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.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs