

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**PATRICK SNODGRASS**  
Claimant

**DECKER TRUCK LINE INC**  
Employer

**APPEAL 17A-UI-05074-JP-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/23/17**  
**Claimant: Appellant (3)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the May 8, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 31, 2017. Claimant participated. Employer participated through vice-president of human resources Brenda McNealey. Employer Exhibit 1 was offered into evidence. Claimant objected because he had not received the policies prior to discharge. Claimant's objection was overruled and Employer Exhibit 1 was admitted into evidence.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an over-the-road truck driver from April 4, 2007, and was separated from employment on April 27, 2017, when he was discharged. Claimant was aware when he was hired that if he lost his license, he would be discharged. Claimant testified that it is understood in the trucking profession that if an employee loses their license they cannot drive.

The employer has a written policy that requires employees to "maintain an acceptable driving record." Employer Exhibit 1. The policy also requires that employees have no convictions for operating while intoxicated in the last three years. Employer Exhibit 1. Claimant was aware of the policies. Employer Exhibit 1.

On April 21, 2017, claimant was arrested for operating while intoxicated in Iowa while off duty. Claimant was not in the employer's vehicle when he was arrested for operating while intoxicated. Claimant was allowed to keep his license for ten days to get his affairs in order. On April 24, 2017, claimant notified the employer that he was arrested for operating while intoxicated in his personal vehicle and he was going to lose his license. Claimant's main job duty required him to be eligible to drive. The employer then looked to see if it could find claimant a different position. On April 27, 2017, Ms. McNealey informed claimant that because he was no longer eligible to drive, they did not have another position for him and he was

discharged. Effective May 1, 2017, claimant's license was suspended for six months because of his arrest for operating while intoxicated. Claimant had not prior disciplinary warnings.

### **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. 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 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).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* 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 Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

Professional drivers, particularly those that drive large and/or heavy vehicles, reasonably have a higher standard of care required in the performance of their job duties to ensure public safety. That duty is evident by special licensing requirements. The employer is charged under both federal and state law with protecting the safety of its employees and the general public by ensuring its employees follow safety laws and are eligible to drive when they are operating a company vehicle. The employer is entitled to establish reasonable work rules and expect employees to abide by them. Claimant was aware when he was hired that if he lost his license or was no longer eligible to drive, he would be discharged. On April 21, 2017, claimant was arrested for driving while intoxicated. Claimant testified he was informed that his license would be suspended because of his arrest and effective May 1, 2017, his license was suspended for six months. Claimant needed a valid driver's license to perform his job duties.

Because claimant's license was suspended due to his arrest for operating while intoxicated, claimant was no longer eligible to drive, which was his main job duty. This is misconduct without prior warning. Benefits are denied.

**DECISION:**

The May 8, 2017, (reference 01) unemployment insurance decision is modified in favor of the respondent. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as claimant 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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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

jp/rvs