

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DELLA M GREEN
Claimant

APPEAL NO. 09A-UI-11034-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BARR-NUNN TRANSPORTATION INC
Employer

OC: 06/28/09
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 28, 2009, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on August 18, 2009. Claimant participated. Employer participated through Eileen Splendore.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits..

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as a over-the-road team driver and was separated on June 12, 2009. Claimant last drove on June 2 at 3:15 p.m. and recorded this in her logbook before sleeping while her co-driver Marvin took over driving. At the point where his legal driving hours expired, he continued to drive over hours rather than take a break or wake claimant to resume driving for him. She had legal hours available to drive. At 7:30 a.m. on June 3 the truck was flagged by a DOT officer to stop at the Brownsville scale for inspection. When they were flagged, he asked her to cover him by reporting in her logbook that she had been driving. She intentionally falsified her driver's logbook to reflect that she had been driving from 1:30 a.m. to 7:30 a.m. on June 3, 2009 knowing it was in violation of DOT regulations and company policy. Both were issued citations by the DOT and both were fired.

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.

Iowa Code § 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.

Employer has a legitimate interest in maintaining the public safety, safety of its drivers and preservation of property by enforcing safety rules and regulations of the company and DOT. Claimant's deliberate log violation at the Brownsville scale on June 3, 2009 to cover for her co-driver being over hours is evidence of willful job-related misconduct regardless of prior warning. Benefits are denied.

DECISION:

The July 28, 2009, reference 01 decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css