

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROOSEVELT WASHINGTON**  
Claimant

**APPEAL NO: 13A-UI-06482-E**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GRAY TRANSPORTATION INC**  
Employer

**OC: 04/28/13  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the May 21, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held in Waterloo, Iowa, before Administrative Law Judge Julie Elder on October 17, 2013. The claimant participated in the hearing. Darrin Gray, President, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time over-the-road truck driver for Gray Transportation from December 28, 2011 to April 29, 2013. He was discharged after reporting he received an OWI while off work April 28, 2013.

The claimant is required to have a valid commercial driver's license (CDL) in order to perform the essential functions of his job. The claimant was charged with OWI and refused to be tested, which results in the loss of driving privileges for one year. After he reported his arrest and what he was charged with, the employer notified him it could no longer use him as a driver and asked him to clean out his truck.

The employer's insurance carrier will not cover any driver with an OWI in the last five years. The employer also explained that while the charge may not have shown up on Iowa records until the claimant lost his license, other states' law enforcement officers could access the fact that the claimant was charged with OWI and believe the claimant was driving on a suspended license. The claimant did lose his driving privileges August 14, 2013, even though the OWI charge was amended to public intoxication September 30, 2013.

## 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 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.

Because the claimant was charged with OWI April 28, 2013, he lost his driving privileges effective August 14, 2013. The claimant reported his arrest and what he was charged with to the employer April 28, 2013, as required by the employer's policy, but the employer could not continue to employ him without a CDL because he could not perform the essential functions of his job. This case is distinguishable from *Holt v. Iowa Department of Job Service*, 318 N.W. 2d 28 (Iowa App. 1982), because the claimant lost his CDL due to his own, off duty, illegal conduct, rather than failing to pass a standard, required licensing examination, after a good faith effort to do so.

While the OWI charge was amended to public intoxication six months after his arrest, at the time of his termination the employer only knew he was charged with OWI and had refused testing. Consequently, it was not unreasonable for the employer to believe the claimant would lose his license for one year, which would prevent him from being employed as an over-the-road truck driver, because he was unable to perform the essential functions of his job and was not insurable.

Under the definition of misconduct for purposes of unemployment benefit disqualification, the conduct in question must be "work connected." *Diggs v. Employment Appeal Board*, 478 N.W.2d 432 (Iowa App. 1991). However, the court has concluded that some off duty conduct can have the requisite element of work connection. *Kleidosty v. Employment Appeal Board*, 482 N.W.2d 416, 418 (Iowa 1992). There still must be some connection between the off-duty conduct and the employment, even if the employer has a rule prohibiting the conduct. The off-duty conduct would not be "misconduct in connection with the individual's employment" unless the employer establishes some harm or potential harm to its interests from the conduct beyond the fact that a rule was violated. See *Dray v. Director*, 930 S.W.2d 390 (Ark. App 1996); *In re Kotrba*, 418 N.W.2d 313 (SD 1988), quoting *Nelson v. Department of Employment Security*, 655 P.2d 242 (WA 1982); 76 Am. Jur. 2d, Unemployment Compensation §§77-78.

The claimant knew or should have known that, at a minimum, the type of conduct in which he engaged in the early morning hours of April 28, 2013, was conduct which would negatively impact the employer. Furthermore, there is a clear and strong connection between the claimant's off-duty conduct and the duties of his employment.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits must be denied.

**DECISION:**

The May 21, 2013, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as 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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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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