

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY CHANDLER
Claimant

APPEAL NO. 09A-UI-00394-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE AMERICAN BOTTLING COMPANY
Employer

**OC: 11-09-08 R: 02
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 6, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 27, 2009. The claimant participated in the hearing. Dave Severs, Branch Manager, 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 sales delivery driver for The American Bottling Company from July 16, 2007 to November 11, 2008. Around November 7, 2008, the employer ran an annual drivers' record check and noted the claimant's driver's license was suspended from October 24, 2007 to February 21, 2008, due to being a habitual violator and having three unpaid fines. The parties agree that at the time of hire the claimant had a temporary permit to drive and was issued a regular commercial drivers license September 15, 2007. He testified he was not aware his license was suspended because the DOT issued him a new license and he paid his fines so did not have reason to believe his license had been suspended at any time. The employer gave the claimant three days to go back to the DOT and provide information about the incidents that would prove what he was saying but he was unable to do so because the DOT would not provide any information about the situations described above in writing. The employer terminated the claimant's employment November 11, 2008, for driving a company vehicle while his license was suspended because employees are expected to know the status of their license and report any problems to the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. 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 Board, 616 N.W.2d 661, 665 (Iowa 2000). While the claimant did violate the employer's policy by driving while his license was suspended, he credibly testified that he was not aware his license was suspended and if he did know he would have informed the employer of the situation. Under these circumstances the administrative law judge must conclude that the claimant's actions were not intentional and consequently do not rise to the level of disqualifying job misconduct. Therefore, benefits must be allowed.

DECISION:

The January 6, 2009, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css