

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CRAIG O FORD
Claimant

APPEAL NO. 14A-UI-06456-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LINN COUNTY HUMAN RESOURCES DEPT
Employer

OC: 05/25/14
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated June 12, 2014, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on July 15, 2014. The claimant participated. The employer participated by Mr. Ben Merta and Ms. Lisa Dawson.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all the evidence in the record, the administrative law judge finds: Craig Ford was employed by Linn County, Iowa, from December 1, 2006 until May 21, 2014 when he was discharged from employment. Mr. Ford was most recently employed as a full-time heavy equipment operator and was paid by the hour. His immediate supervisor was Mr. Greg Anderson.

Mr. Ford was separated from his employment with Linn County on May 21, 2014 because his Class A CDL license had been suspended by the state of Iowa based upon claimant's conviction for DUI. Because of the claimant's DUI conviction, his driving privileges were suspended and the claimant had lost the licensing required to perform his duties as a heavy equipment operator for the County.

In November 2011, the claimant and other County employees were informed that it was a requirement for them to maintain all necessary licensing and certifications to perform their jobs and that the loss of any licensing or certifications could result in termination from employment. Because the claimant had lost the licensing necessary to perform his job and because of the change in the classification rules, the employer was unable to allow Mr. Ford to continue to be employed in his job after having his commercial driver license privileges suspended.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes disqualifying misconduct. It does.

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).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant discharge of an employee may not necessarily be serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In the case at hand the employer had a policy requiring employees under maintenance job classifications to maintain all necessary licensing and certifications in order to remain employed by Linn County. Mr. Ford and other employees were informed of the requirement and agreed to the change by remaining employed with the County.

When the claimant was convicted of DUI, his Class A CDL license was suspended effective May 21, 2014 and the claimant was no longer able to perform his duties as his necessary licensing had not been maintained as required. Because the claimant no longer had the licensing required to perform his job, he was separated from his employment with Linn County.

The Supreme Court of the state of Iowa addressed a similar situation in the case of Cook v. Iowa Department of Job Service, 299 N.W.2d 698 (Iowa 1980) and ruled that the claimant's separation from employment was inextricably tied to the claimant's self-loss of his CDL stating that the loss was self-inflicted and disqualifying for unemployment insurance benefits.

The administrative law judge thus concludes that the claimant's loss of the required CDL licensing was contrary to the employer's interests and standards of behavior and disqualifying under the provisions of the Employment Security Law.

DECISION:

The representative's decision dated June 12, 2014, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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