

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSHUA B JUDD**  
Claimant

**APPEAL NO. 10A-UI-15770-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BACOR LTD**  
Employer

**OC: 10/03/10**  
**Claimant: Appellant (2-R)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated November 5, 2010, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 28, 2010. The claimant participated. The employer participated by Loring Waterman, general manager. The record consists of the testimony of Loring Waterman and the testimony of Joshua Judd.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a distributor of Pepsi products. The claimant was hired on March 9, 2010, as a merchandiser. The claimant was responsible for delivering products to customers such as grocery stores. The claimant would unload product and place it in the stores. The claimant was a full-time employee. His last day of work was October 4, 2010. The claimant was terminated on October 4, 2010.

One of the requirements of the claimant's job was that he have a valid driver's license. On October 2, 2010, the claimant was arrested for driving under the influence. He informed Loring Waterman about the arrest on October 4, 2010. At that time, the claimant still had his license. It was not suspended until October 14, 2010. Mr. Waterman told the claimant that he would have to let him go. All employees had to have a valid driver's license. In addition, Mr. Waterman informed the claimant that the employer's insurance company would not insure the claimant. At the time of the claimant's termination, the insurance company had not yet been informed about the claimant's arrest.

**REASONING AND CONCLUSIONS OF LAW:**

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The employer has the burden of proof to show misconduct.

If a claimant loses his driver's license due to a traffic violation and a valid license is required in order to perform his job, a subsequent discharge is usually deemed misconduct. In addition, a claimant who becomes uninsurable and is therefore terminated may also be disqualified for misconduct. The difficulty in this case is that the claimant was terminated *before* his license was suspended and *before* the employer's insurance company had been notified. Mr. Waterman elected to discharge the claimant based on his conclusion that the claimant would lose his license and would become uninsurable. Neither event had occurred at the time of discharge. While it was within the discretion of the employer to discharge the claimant from the employment, the administrative law judge must conclude that that the discharge was not for misconduct in connection with the employment. The evidence indicates that the employer prematurely discharged the claimant from the employment before the pending license revocation had any impact on the employment. Benefits are allowed if the claimant is otherwise eligible.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section

96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

If a person loses his means of transportation from his residence to the area of his usual employment, the person will be deemed not to have met the availability requirements of the law. However, an individual shall not be disqualified for restricting employability to the area of usual employment. 871 IAC 24.23(4). The evidence in this case established that the claimant's license has been suspended and that he pled guilty to OWI on November 23, 2010. This matter is therefore remanded to the Claims Section to determine whether the claimant is able and available for work.

**DECISION:**

The representative's decision dated November 5, 2010, reference 01, is reversed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible. This case is remanded to the Claims Section to determine whether the claimant is able and available for work.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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