

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICK N BRANNON
Claimant

APPEAL NO. 13A-UI-12211-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ILLINI STATE TRUCKING COMPANY
Employer

OC: 09/22/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Patrick Brannon (claimant) appealed a representative's October 22, 2013, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Illini State Trucking Company (employer) for conduct not in the best interest of the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 21, 2013. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Alan Cernick, General Manager, and Kathleen Deruntz, Human Resources Administrator.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on May 17, 2011, as a full-time company driver. The claimant signed for receipt of the employer's handbook. The employer issued the claimant multiple verbal warnings for failure to follow instructions. On September 7, 2013, the claimant was not scheduled to work. On September 8, 2013, the claimant was scheduled to make a delivery from Iowa to Indiana but did not do so. On September 9, 2013, the employer watched the global positioning device (GPS) read out of the claimant's truck's activity. The claimant's truck drove around Davenport, Iowa, for three days. The employer repeatedly called the claimant's cell phone but could not reach the claimant. The employer reported the truck as stolen to law enforcement. Through GPS law enforcement was able to track the truck down in Davenport, Iowa. The claimant was driving with a passenger. There was a beer can in the cab but the claimant did not appear to be intoxicated. Law enforcement let the claimant go and the employer instructed the claimant to park the truck in a specified lot. Law enforcement confiscated a pop can with the bottom removed. That can was later tested and tested positive for cocaine. The claimant said the pop can and beer can was the passenger's property. The claimant did not return to work. The employer sent the claimant a certified termination letter. The claimant was terminated for unauthorized use of the employer's truck for three days, driving

the truck for over 1,000 miles, and using the employer's fuel card to put fuel in the truck without the employer's permission.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for 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.

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). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's October 22, 2013, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from

work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css