

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DONALD L CRAWFORD JR**  
Claimant

**APPEAL NO. 11A-UI-14202-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WESTERN EXPRESS INC**  
Employer

**OC: 09/25/11**  
**Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Donald Crawford, filed an appeal from a decision dated October 20, 2011, reference 02. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on November 29, 2011. The claimant participated on his own behalf. The employer, Western Express, participated by Terminal Manager Joe McLimans

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Donald Crawford was employed by Western Express from February 10 until May 2, 2011 as a full-time over the road truck driver. On May 1, 2011, he attended a birthday party where he consumed alcohol. The next day he picked up a load in Adel, Iowa. Shortly thereafter he was pulled over by a law enforcement officer for not having his load properly tarped. The officer smelled alcohol and administered a breathalyzer test on the spot. The reading was .073. A second confirmatory test was done at the police station and the results were still at least .07. The department of transportation (DOT) regulations considers anything more than .04 for the holder of a commercial drivers license (CDL) to be beyond the acceptable limit.

The officer contacted Terminal Manager Joe McLimans to inform him of the test results and stated the regulations imposed a one-year suspension on the claimant's CDL. Mr. McLimans informed the corporate office and when Mr. Crawford contacted him later by phone, the employer notified him he was discharged.

**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.

The claimant was aware of the acceptable blood-alcohol limit for CDL holders. He was over that acceptable limit in violation of company policy and DOT regulations. As a result his license was suspended for one year. Repeated traffic violations rendering a claimant uninsurable can constitute job misconduct even if the traffic citations were received on the claimant's own time and in his own vehicle. *Cook v. IDJS*, 299 N.W.2d 698 (Iowa 1980). The administrative law judge finds the reasoning in that case to be applicable here. The claimant's off duty conduct resulted in him being in violation of known company rules and rendering him unable to continue to be employed. This is conduct not in the best interests of the employer and the claimant is disqualified.

#### **DECISION:**

The representative's decision of October 20, 2011, reference 02, is affirmed. Donald Crawford Jr. is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

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Bonny G. Hendricksmeyer  
Administrative Law Judge

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Decision Dated and Mailed

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