

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**STEPHEN LEWIS  
2148 – 260<sup>TH</sup> AVE  
OSCEOLA IA 50213**

**CONTRACT TRANSPORT INC  
PO BOX 1575  
DES MOINES IA 50306**

**Appeal Number: 04A-UI-05554-ET  
OC 04-25-04 R 03  
Claimant: Appellant (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 10, 2004, 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 June 8, 2004. The claimant participated in the hearing. Allen Bergman, Human Resources Manager, and Jeane Nible, Corporate Treasurer, participated in the hearing on behalf of the employer.

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 driver for Contract Transport from August 13, 2001 to April 23, 2004. The claimant had an argument with co-worker Harry Bergman in the driver's

lounge April 23, 2004. He was upset because approximately one month earlier two mechanics, a fueler and Mr. Bergman, reported the claimant's truck was dirty and the claimant was assessed a \$25.00 cleaning fee. The claimant was still upset about the incident and when Safety Director Jim Nible entered the lounge and asked what was going on, the claimant told him it was "none of (his) fucking business." Mr. Nible said it was his company so the argument was his business. He then suggested the claimant and Mr. Bergman go speak to Human Resources Manager Allen Bergman and the claimant said everyone there was a "fucking liar." Allen Bergman walked into the driver's lounge at that point and tried to calm the claimant. The claimant then repeated that, "everyone is a fucking liar" and Mr. Nible told the claimant if he could not resolve the issue he should turn in his property. The claimant asked if he was being fired and Mr. Nible repeated that if the claimant and Harry Bergman could not resolve the problem he should turn in his property. The claimant went to get his property and Allen Bergman asked if he wanted to talk to Mr. Nible about continuing his employment. The claimant said he "wasn't going to kiss anyone's ass to keep a job," and then left the employer's premises.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was upset with Harry Bergman and the employer about a situation that occurred one month earlier. Although the claimant disagreed with the employer's deduction of a \$25.00 cleaning fee and told the employer he was upset about the situation, he did not complete a payroll correction report and the employer's actions do not seem unreasonable in light of the fact four employees reported the claimant left the truck dirty. "The use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made." Myers v. EAB, 462 N.W.2d 734 (Iowa App. 1990). The claimant became angry and argued with Harry Bergman when he attempted to discuss the situation with him and then used profanity and yelled at Mr. Nible and Allen Bergman when they attempted to intervene and calm him down. The claimant's seeming inability to put previous incidents behind him and move beyond perceived slights and offenses contributed to this situation and his conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. Consequently, the administrative law judge concludes the employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

#### DECISION:

The May 10, 2004, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

je/b