

**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**

**ROGER L BEAVER  
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CARLISLE IA 50047**

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**Appeal Number: 05A-UI-07642-JTT  
OC: 06/26/05 R: 02  
Claimant: Appellant (2)**

**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, 4th 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 for Misconduct

STATEMENT OF THE CASE:

Roger Beaver filed a timely appeal from the July 19, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 19, 2005. Mr. Beaver participated. Attorney William Cahill represented the employer and presented testimony through Maintenance Supervisor Matthew Moore; Driver Supervisor Henry Beyer; and Director of Safety, Training, and Public Funding Robert Hoxie. Exhibit One was received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Roger Beaver was employed by Burlington Stage Lines as a full-time bus driver from August 20, 2004 until June 23, 2005, when Director of Safety, Training, and Public Funding Robert Hoxie discharged him for misconduct.

The final incident that prompted the discharge occurred on June 22-23, 2005. On June 22, Mr. Beaver operated bus number 208 from Chicago to Cedar Rapids. Another driver was assigned to drive bus number 208 from Cedar Rapids to Des Moines and return to Cedar Rapids the next day. Bus number 208 is an older bus manufactured during the 1988 model year. As Mr. Beaver was operating the bus from Rockford, Illinois, to Cedar Rapids, the bus lost significant power on inclined portions of the highway. At times, the bus dropped to 20 miles per hour. The loss of power caused Mr. Beaver to arrive in Cedar Rapids 20 minutes behind schedule.

Mr. Beaver contacted maintenance supervisor Matthew Moore to complain about the loss of power and poor air conditioning. Mr. Moore indicated that he would send bus number 210 to Cedar Rapids and return bus number 208 to Burlington so that it could be examined. Bus number 210 was an even older bus manufactured during the 1986 model year. Mr. Beaver advised Mr. Moore that he would not operate either bus and further indicated that if the employer sent either bus, the employer would need to find another driver to work Mr. Beaver's assigned route the next day. Mr. Beaver did not indicate that he was quitting the employment, but indicate that he was refusing to operate the two older buses.

Mr. Beaver had not previously refused to perform assigned duties. Mr. Beaver had previously been assigned to the Cedar Rapids to Chicago route on many occasions, and had been assigned to other routes as well. Mr. Beaver had performed his previously duties without incident.

Driving supervisor Henry Beyer accompanied a driver in training on the trip from Burlington to Cedar Rapids in bus number 210. Mr. Beyer concluded that bus 210 had "sufficient" power considering the age of the bus, as well as the route on which it would be operated. The employer did not assign particular buses to particular drivers. Instead, the employer assigned particular buses to particular routes, based on the employer's overall needs.

When Mr. Beyer encountered Mr. Beaver in Cedar Rapids, Mr. Beaver advised Mr. Beyer that bus number 208 was "junk" and had not been working on the hills. Mr. Beaver then rode back to Des Moines as a passenger on bus 210.

Mr. Beyer and the driver in training took bus number 208 back to Burlington. Mr. Beyer observed the bus did drop down to 50 miles per hour on the hills, but was otherwise able to maintain the 65-mile per hour speed limit. When maintenance supervisor Matthew Moore received bus number 208 he checked the air conditioning, but did not test the power because Mr. Beyer had concluded there was no problem with the power. The employer made the decision to return bus number 208 to Cedar Rapids in time for it to be used for the trip from Cedar Rapids to Chicago the next day. The employer did not advise Mr. Beaver that bus number 210 would be replaced with bus number 208. Maintenance supervisor Matthew Moore advised safety director Robert Hoxie that there might be a problem with Mr. Beaver's shift the next day and the employer made arrangements to cover Mr. Beaver's assigned route.

On the morning of June 23, 2005, Mr. Beaver did not appear at the Des Moines bus station to ride bus number 210 up to Cedar Rapids so he could start his route from Cedar Rapids to Chicago. Mr. Beaver had telephoned the company dispatcher to confirm that the employer had covered the route with another driver. When Mr. Beaver did not appear at the Des Moines bus station, Mr. Hoxie telephoned Mr. Beaver's home. Mr. Beaver indicated he was not going to operate bus numbers 208 and 210, due to problems with the power and air conditioning. Mr. Hoxie advised Mr. Beaver that the employer considered Mr. Beaver's refusal of a dispatch a

violation of company policy. Mr. Hoxie advised Mr. Beaver that Mr. Beaver's employment was "done."

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Beaver was discharged for misconduct in connection with his employment.

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).

Since Mr. Beaver was discharged, the employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily 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). Continued failure to follow reasonable instructions constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App.

1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See Woods v. Iowa Department of Job Service, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See Endicott v. Iowa Department of Job Service, 367 N.W.2d 300 (Iowa Ct. App. 1985).

The evidence in the record indicates that Mr. Beaver's refusal on June 23 to operate bus numbers 208 and 210 was the only instance in which Mr. Beaver had refused to follow the employer's instructions. Accordingly, the evidence fails to establish "continued" failure to follow the employer's instructions. The evidence further establishes that Mr. Beaver refused to operate the two older buses because he was concerned about loss of power and insufficient air conditioning. Either of these issues would be legitimate concerns for a bus driver responsible for transporting a busload of paying passengers, each of whom might reasonably expect reasonable accommodations, including arriving at their destination at the scheduled time.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Beaver was not discharged for misconduct, but was discharged for no disqualifying reason. See 871 IAC 24.32(1)(a) and the cases cited above. Accordingly, Mr. Beaver is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Beaver.

DECISION:

The Agency representative's decision dated July 19, 2005, reference 01, is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

jt/kjw