

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMES P SHADDEN**  
Claimant

**APPEAL NO: 07A-UI-00403-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**J D DOUBLE M**  
Employer

**OC: 12/10/06 R: 01  
Claimant: Respondent (1)**

Section 96.5-2- a- Discharge

**STATEMENT OF THE CASE:**

J. D. Double M (employer) appealed a representative's January 4, 2007 decision (reference 01) that concluded James P. Shadden (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 29, 2007. The claimant participated in the hearing. Mickey Stogdill, the owner, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the employer discharge the claimant for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in December 2004. The claimant worked as a full-time local or shag driver for the employer. When the employer hired the claimant, the claimant received copies of the employer's safety policy. The employer's safety policy requires drivers to maintain an eight-second distance from other vehicles when driving. In adverse conditions, the employer requires drivers to maintain a 12-second distance from other vehicles. The claimant understood this policy.

In March 2006, the claimant and the employer's safety director left a location at the same time. The claimant drove the employer's semi-truck and the safety director drove his personal vehicle back to the office. The claimant returned to the employer's office before the safety director because the claimant took a different route. The safety director got delayed on the interstate.

In May, the employer's long-time friend called him to report that one of the employer's drivers cut in and out of traffic in an aggressive manner. When the employer talked to the claimant about this complaint, the claimant denied he had driven in such a manner. The claimant does not remember such a conversation.

Prior to November 30, 2006, the claimant's job was not in jeopardy. He did not have any driving tickets nor had he been involved in any driving-related accidents. On November 30, the claimant left in his truck the same time the employer's insurance agent left the employer facility. The claimant knew the insurance agent had been talking to the employer and saw him driving.

The insurance agent contacted the employer to report that the claimant tailgated other vehicles and did not use his lights to signal lane changes. The employer considered the claimant's aggressive driving a violation of the employer's safety policy. Although the claimant denied he had driven the way the insurance agent reported, the employer discharged the claimant for his unprofessional behavior based on customers' complaints, a violation of the employer's policy.

### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Based on reports from two people the employer considered reliable, the employer made a business decision to discharge the claimant. The employer had the advantage of making a credibility determination that was not possible during the hearing. Instead of having the two people who made the reports in May and November 2006 testify, the employer relied on hearsay information. Since the claimant's testimony is credible, the employer's hearsay information cannot be given as much weight as the claimant's testimony. As a result, a preponderance of the evidence establishes the claimant did not drive in an aggressive or unsafe manner and did not behave in an unprofessional manner in May or in late November 2006. The facts do not establish that the claimant committed work-connected misconduct. As of November 26, 2006, the claimant is qualified to receive unemployment insurance benefits.

**DECISION:**

The representative's January 4, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of November 26, 2006, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

---

Debra L. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

dlw/pjs