

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**THOMAS J FREIN**  
Claimant

**APPEAL NO. 10A-UI-06292-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RUAN TRANSPORT CORP**  
Employer

**Original Claim: 09/13/09  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated April 16, 2010, reference 05, that held the claimant was not discharged for misconduct on March 23, 2010, and that allowed benefits. A telephone hearing was held on June 14, 2010. The claimant participated. The employer did not participate. Employer Exhibits 1 and 2 were received as evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witness and having considered the evidence in the record, finds: The claimant began employment as a full-time transport driver on September 24, 2009, and last worked for the employer on March 23, 2010. The claimant was assigned to make transport deliveries to Target Stores. The claimant signed for a policy on February 14, 2010 that he would not tamper, misuse, or damage Target property.

Shortly before midnight on March 20, the claimant was joking around with some other employee-drivers when an issue arose about the location of the store security camera. The claimant placed a piece of paper in front of the security camera to show the other drivers where it was located. Target security personnel reported this matter as an incident to the employer.

Employer representatives watched the video and confirmed with other drivers that they were joking around with the claimant when he gestured with the paper to cover the camera. Target considered the claimant to have violated its policy and requested he be removed from its account. The employer discharged the claimant on March 23 at Target's request.

Although the employer submitted documents for the hearing that were received as evidence, it did not request any person and/or submit any phone number to be called for the hearing.

**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 administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on March 23, 2010.

The isolated incident involving the claimant's conduct and the security camera does not rise to the level of job-disqualifying misconduct.

**DECISION:**

The department decision dated April 16, 2010, reference 05, is affirmed. The claimant was not discharged for misconduct on March 23, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/kjw