BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

DERRICK F BOCKENSTEDT	:	
	:	**HEARING NUMBER:** 10B-UI-02103
Claimant,	:	
	:	
and	:	**EMPLOYMENT APPEAL BOARD DECISION**
UNITED PARCEL SERVICE	:	
Employer.		

N O T I C E

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2A, 24.32-1

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE DENIED

The employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The claimant, Derrick F. Bockenstedt, was employed by United Parcel Service from April 18, 2001 through August 27, 2010, initially as a part-time preloader; and then as a full-time package car driver beginning August 29, 2009. (Tr. 2-3, 5) The employer has a policy for reporting accidents: all accidents must be immediately reported to management, regardless of how minor the accident may seem. (Tr. 3) The claimant had knowledge of this policy (Tr. 6)

On August 27th, the employer learned from University of Iowa campus police (Tr. 3, 4, Exhibits 4 & 5) that the claimant hit a 2006 Nissan (Tr. 4, Exhibit 6) that belonged to one of the employer's customers "…at the 600 block of Hawkeye Drive in Iowa City, Iowa" the previous day. (Tr. 2, 5) The employer confronted Mr. Bockenstedt about the matter to which the claimant, initially, indicated that he had no

recollection of it. (Tr. 3) When pressed, the claimant denied that he hit the vehicle. (Tr. 4) After further discussion with the employer, the campus police and the customer with her husband, the claimant admitted "…I probably should have [reported the incident], but I didn't…" (Tr. 7) Mr. Bockenstedt was terminated.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2009) provides:

> *Discharge for Misconduct*. If the department finds the individual has been discharged for misconduct in connection with the individual's employment:
>
> The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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 Iowa Supreme court has accepted this definition as reflecting the intent of the legislature. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665, (Iowa 2000) (quoting Reigelsberger v. Employment Appeal Board, 500 N.W.2d 64, 66 (Iowa 1993).

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 substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 NW2d 661 (Iowa 2000).

Iowa Code section 96.6(2) (2009) provides, in pertinent part:

> …If an administrative law judge affirms a decision of the representative, or the Appeal Board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5….

The record establishes that the employer had a policy requiring employees involved in any type of accident to immediately report the matter to management, which Mr. Bockenstedt acknowledged. (Tr. 3, 6) The fact that he was initially equivocal about the matter, stating that he couldn't remember (Tr. 3-4), and later flat-out denied incident until he was essentially reminded by all the parties involved (campus police, employer, and accident victim) makes his 'lack of knowledge' and denial wholly incredible. Bockenstedt's denial, coupled with his subsequent admission that he should have taken action, and yet failed to act, is probative that he intended to keep quiet about the accident. If the campus police hadn't come along, it is doubtful that the claimant would have ever reported the matter. The claimant intentionally failed to report the accident and did so knowing that it was against company policy.

Mr. Bockenstedt's behavior was not only deceitful, but contrary to the best interests of the employer. The court in White v. Employment Appeal Board, 448 N.W.2d 691 (Iowa App. 1989) held that even a single instance of dishonestly with the employer, which is investigating possible misconduct, is disqualifying. Here, the claimant didn't 'come clean' until after the employer was in the midst of the investigation as it involved him. Based on this record, we conclude that the employer satisfied their burden of proof.

DECISION:

The administrative law judge's decision dated March 26, 2010 is **REVERSED**. The claimant was discharged for job-disqualifying misconduct. Accordingly, he is denied until such time he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. See, Iowa Code section 96.5(2)"a".

Although this decision disqualifies the claimant for receiving benefits, those benefits already received shall ***not*** result in an overpayment. Nor will the employer's account be charged.

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Monique F. Kuester

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Elizabeth L. Seiser

AMG/ss

DISSENTING OPINION OF JOHN A. PENO:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety.

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John A. Peno

AMG/ss