

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STEPHEN CLOW**  
Claimant

**APPEAL NO: 08A-UI-09903-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DECKER TRUCK LINE INC**  
Employer

**OC: 09-28-08 R: 02**  
**Claimant: Respondent (2R)**

Section 96.5-2-a – Discharge/Misconduct  
Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the October 20, 2008, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 10, 2008. The claimant participated in the hearing. Sandy Loney, Director of Human Resources and Bill Fairbank, Employer's Attorney, participated in the hearing on behalf of the employer. Employer's Exhibits One through Seven and Claimant's Exhibits A and B were admitted into evidence.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**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 over-the-road truck driver for Decker Truck Lines from June 13, 2007 to September 26, 2008. On September 19, 2007, the employer received a motorist complaint indicating the claimant cut him off on I-80 in Indiana. The employer spoke to the claimant and made a record of the incident but the claimant did not have any recollection of the situation (Employer's Exhibit One). On January 7, 2008, the claimant backed an empty trailer into a Tyson parking lot fence in Tennessee (Employer's Exhibit Two). He was not aware he hit the fence or slightly damaged a pole and the employer determined it was a preventable accident (Employer's Exhibit Two). On June 2, 2008, the claimant was making a left hand turn into IRA Higdon Grocery in Georgia and struck a gate post, bending it over (Employer's Exhibit Three). The driver's side of the trailer had two one foot long scrapes and the middle marker light was broken (Employer's Exhibit Three). He received a warning letter for a preventable accident and was placed on probation for six months due to the accident and property damage and was told that another incident could result in termination of employment (Employer's Exhibit Three). On June 24, 2008, the claimant drove 70 miles outside his route on his way from Storm Lake to Texas because he was used to going through Kansas City instead of Topeka (Employer's Exhibit Four). His actions were deemed a driver failure and he was required to

reimburse the employer for the out of route miles (Employer's Exhibit Four). On July 6, 2008, the employer received a motorist complaint that the claimant cut him off and the motorist had to slam on his breaks and take the shoulder to avoid a collision (Employer's Exhibit Five). The claimant did not have any recollection of the incident and the employer required him to complete a course on space management (Employer's Exhibit Five). On September 23, 2008, the claimant reported that he hit a gate with the right middle side of his truck when entering a plant in Illinois (Employer's Exhibit Six). He did not know he hit the gate until after he went in to get unloaded (Employer's Exhibit Six). The post of the gate was bent over and the truck had a dent in the middle and the bottom middle light was knocked off (Employer's Exhibit Six). The employer terminated the claimant's employment September 26, 2008, for "unsatisfactory safety performance" (Employer's Exhibit Seven). This decision was made because he had an accident while on probation (Employer's Exhibit Seven).

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

### **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.

While the administrative law judge does not believe the claimant acted intentionally, he did demonstrate a carelessness or negligence of such degree of recurrence as to manifest equal culpability. Consequently, the administrative law judge must conclude the claimant's conduct exhibited 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. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits must be denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

**DECISION:**

The October 20, 2008, reference 01, decision is reversed. 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. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs