

**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**

**PAUL M LAWLER  
3821 LORTON AVE  
DAVENPORT IA 52807**

**ALTORFER INC  
2600 SIXTH ST SW  
PO BOX 1347  
CEDAR RAPIDS IA 52406-1347**

**Appeal Number: 04A-UI-02802-RT  
OC: 01-18-04 R: 04  
Claimant: Appellant (1)**

**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, 4<sup>th</sup> 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:

The claimant, Paul M. Lawler, filed a timely appeal from an unemployment insurance decision dated March 9, 2004, reference 02, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on April 5, 2004 with the claimant participating. Erik Driessen, Human Resources Manager; Dale Gimm, Field Dispatch; and Vicki Gorsh, Assistant to the General Manager; participated in the hearing for the employer, Altorfer, Inc. Employer's Exhibits 1 through 3 were admitted into evidence.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a part-time parts runner or delivery person from October 1, 2003 until he was discharged on January 20, 2004 for having accidents with employer's vehicles and for failing to report one accident. On January 19, 2004, while operating a Dodge pickup truck for the employer, the claimant backed into a pole or post at a customer damaging the truck. When the claimant returned to the employer, he did not report this accident to anyone. The manager, Linda Rose, was in a meeting. The claimant waited for an hour but left without informing Ms. Rose. There were others available at the employer that he could have informed of the accident but did not do so. The claimant also could have left a note or something on the pickup but did not do so. Ms. Rose noticed the truck damage that day and called Dale Gimm, Field Dispatcher, and asked about the damage and he was unaware of the damage. The next day, Mr. Gimm talked to the claimant and the claimant conceded that he had damaged the truck and had not reported to the employer nor had he reported it to the customer. The claimant was then discharged. The employer has a rule in its handbook, a copy of which the claimant received, requiring that employees involved in any work related accident, no matter how minor, must immediately report it to their supervisor. Rules further provide that employees who fail to report such incidents will be subject to disciplinary action up to and including discharge. The employer's rules also prohibit careless or inefficient performance of duties and failing to comply with safety rules all as shown at Employer's Exhibit 2.

Previously, on December 16, 2003, the claimant had been in another accident with a smaller pickup truck of the employer's when the claimant hit a fence with his right passenger door because he turned too sharply. The claimant thought he had cleared the fence but had not and ran into the fence. The claimant did properly report this accident. The accident reports and pictures of the damage for both accidents appear at Employer's Exhibit 1 and 3. Total damage on the two trucks was \$3,500.00. The claimant received an oral warning for the accident on December 16, 2003.

#### REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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).

In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. At the outset, the administrative law judge includes that the employer has failed to demonstrate by a preponderance of the evidence that claimant's acts in having the two accidents and failing to report the second accident were deliberate acts or omissions constituting a material breach of his duties or evinced a willful or wanton disregard of the employer's interests and are disqualifying misconduct for those reasons. However, the administrative law judge is constrained to conclude that claimant's acts here in having two accidents and failing to report the second one were acts of carelessness or negligence in such a degree of recurrence as to establish disqualifying misconduct. The claimant had an accident on December 16, 2003 that appears to be his fault. This was due to the claimant's negligence when he hit a fence that he thought he had cleared but had not. The claimant did properly report this accident. Approximately one month later, the claimant had a second accident when he backed into a pole. The claimant did not report this accident. The claimant testified that he waited for approximately an hour to speak to the Manager, Linda Rose, and then left without reporting the accident. However, the evidence establishes that there were others at the employer that the claimant could have reported the accident to or he could have left a note on the pickup truck, neither of which he did. This accident occurred because the claimant had backed into a pole and it appears to be also due to the claimant's negligence. The administrative law judge concludes that claimant's failure to report the accident was at least negligence also. The administrative law judge concludes that the combined negligence of the two accidents and the failure to report the second accident are carelessness or negligence in such a degree of recurrence as to manifest equal culpability, wrongful intent or design, or to show an intentional and substantial disregard of the employer's interests or the claimant's duties and obligations to the employer which does establish disqualifying misconduct.

Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct, and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

DECISION:

The representative's decision of March 9, 2004, reference 02, is affirmed. The claimant, Paul M. Lawler, is not entitled to receive unemployment insurance benefits until or unless he requalifies for such benefits.

tjc/b