

**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**

**SHAWN C BELL  
2717 WHITEWOOD AVE  
DAVENPORT IA 52802**

**QUAD CITY TOYOTA INC  
PO BOX 2516  
DAVENPORT IA 52804**

**Appeal Number: 05A-UI-12151-JTT  
OC: 11/06/05 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, 4th 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:

Claimant Shawn Bell filed a timely appeal from the November 23, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on December 14, 2005. Mr. Bell participated. Vice President Martin Guilfoyle represented the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Shawn Bell was employed by Quad City Toyota as a full-time car detailer from May 1, 2003 until November 3, 2005, when President Michael Guilfoyle discharged him for misconduct. On November 3, Mr. Bell had just finished washing a car and was pulling out of the washing bay when he reached toward a bottle of cleaning solution on the floor of the vehicle. The vehicle made contact with part of the bay opening and received damage. Mr. Bell reported to his

immediate supervisor, Brian Buchanan, that he had found damage on the vehicle, but denied any knowledge of how the damage occurred. Mr. Buchanan and Mr. Bell then met with President Michael Guilfoyle and repeated the same story. The damage to the vehicle and the conversations with the employer occurred between 11:15 and 11:30 a.m. At 11:30 a.m., Mr. Bell went on his lunch break. During the lunch break, Mr. Bell admitted to a coworker that he had been operating the vehicle at the time the damage had occurred. After the employer had spoken with Mr. Bell, the employer examined the washing bay where Mr. Bell had been cleaning the vehicle and noted paint on the bay opening that matched the paint color of the damaged vehicle. Before Mr. Bell had finished his lunch break, Mr. Guilfoyle summoned him and confronted him with the evidence showing the vehicle damage was caused by contact with the washing bay. Mr. Bell admitted to causing the damage to the vehicle and indicated he had intended to approach Mr. Guilfoyle with the truth after his lunch break. Mr. Guilfoyle discharged Mr. Bell for damaging the vehicle and misleading the employer about his involvement in the damage.

At the hearing, Mr. Bell admitted operating the vehicle in the washing bay and accidentally causing damage to the vehicle when the vehicle made contact with the bay opening. Mr. Bell asserts that he did not intentionally mislead the employer about his involvement, that he was scared at the time, and that he merely said the first thing that came to mind, which was that he did not know how the vehicle was damaged.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Bell was discharged for misconduct in connection with the employment. It does.

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).

Since the claimant was discharged, the employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

The evidence in the record establishes that on November 3, 2005, Mr. Bell was careless in operating one of the employer's vehicles and caused damage to the vehicle. The evidence in the record does not establish a pattern of carelessness and/or negligence. Therefore, the careless damage to the vehicle would not disqualify Mr. Bell for benefits. However, the evidence establishes that on November 3, Mr. Bell twice intentionally misrepresented to the employer his knowledge of how the damage to the vehicle was caused. Mr. Bell's attempts to mislead the employer constituted a willful and wanton disregard of the employer's interests. The employer reasonably expected a truthful report from Mr. Bell regarding the damage to the vehicle, and Mr. Bell's intentionally false reports constituted substantial misconduct.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Bell was discharged for misconduct. Accordingly, Mr. Bell is disqualified for benefits until 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 employer's account shall not be charged for benefits paid to Mr. Bell.

DECISION:

The Agency representative's November 23, 2005, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements.

jt/kjw