

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROBERT A JACKSON**  
Claimant

**APPEAL NO. 09A-UI-06431-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SMITHWAY MOTOR XPRESS INC**  
Employer

**Original Claim: 03/15/09  
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Robert Jackson filed an appeal from a representative's decision dated April 14, 2009, reference 01, which denied benefits based on his separation from Smithway Motor Xpress, Inc. (SMX). After due notice was issued, a hearing was held by telephone on May 21, 2009. Mr. Jackson participated personally. The employer participated by Terri Pearson, Assistant Human Resources Manager.

**ISSUE:**

At issue in this matter is whether Mr. Jackson was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Jackson was employed by SMX from September 5, 2008 until March 13, 2009 as an over-the-road semi driver. He was discharged because of the number of accidents he had while driving the employer's vehicle.

Mr. Jackson was in Harrisonburg, Virginia, when he struck a utility pole on December 19, 2008. The incident occurred while he was turning around in a parking lot and resulted in damages of \$2,104.39. His second accident was in Dallas, Texas, on February 5, 2009. Mr. Jackson was making a left turn in a truck stop parking lot when the left rear of his vehicle caught the fender of another truck. Damage to the other vehicle was in the amount of \$2,532.81. After the February 5 incident, the employer made plans to route Mr. Jackson to Fort Dodge to counsel him regarding his driving.

On March 3, Mr. Jackson was at a Coca-Cola facility in St. Charles, Illinois, when some employees there told him he had "rubbed" against a vehicle. He could not detect any damage and purchased a disposable camera to take pictures of the vehicle. The unprocessed film was turned over to SMX. Mr. Jackson has requested copies of the pictures but none have been provided. The employer paid \$1,169.00 on the claim. As a result of this final incident, he was discharged on March 13, 2009. The employer had not routed him to the Fort Dodge facility

since the incident of February 5. He had not been warned that his continued employment with SMX was in jeopardy.

**REASONING AND CONCLUSIONS OF LAW:**

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). There must be a current act of misconduct to support a disqualification from benefits. See 871 IAC 24.32(8).

Mr. Jackson's discharge was apparently prompted by the allegation that he struck another vehicle in Illinois on March 3, 2009. He denied striking any vehicle at the Coca-Cola facility. He also denied that there was any damage to the vehicle that was pointed out as the one he struck. Although the police were called, the officer's report was not offered as evidence. The administrative law judge believes such a report would indicate whether the officer detected damage to the vehicle in question. Although Mr. Jackson took pictures of the vehicle, they were not offered as evidence to establish that there was, in fact, damage to the vehicle. If the pictures confirmed damage, it would be reasonable to infer that Mr. Jackson did strike the vehicle. Given the state of the evidence, the administrative law judge cannot find that Mr. Jackson struck a vehicle on March 3.

The next most prior incident was on February 5, 2009. Conduct that occurred on February 5 would not constitute a current act in relation to the discharge that occurred on March 13. Inasmuch as the employer failed to establish a current act of misconduct, no disqualification is imposed. While the employer may have had good cause to discharge, conduct that might warrant discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons cited herein, benefits are allowed.

**DECISION:**

The representative's decision dated April 14, 2009, reference 01, is hereby reversed. Mr. Jackson was discharged by SMX, but misconduct has not been established. Benefits are allowed, provided he is otherwise eligible.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/kjw