

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TIMOTHY L BRUNELL**  
Claimant

**APPEAL NO. 07A-UI-01878-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PRIORITY COURIER INC**  
Employer

**OC: 01/21/07 R: 02  
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Timothy Brunell filed an appeal from a representative's decision dated February 15, 2007, reference 03, which denied benefits based on his separation from Priority Courier, Inc. After due notice was issued, a hearing was held by telephone on March 12, 2007. Mr. Brunell participated personally. The employer participated by John Jero, Manager.

**ISSUE:**

At issue in this matter is whether Mr. Brunell 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. Brunell was employed by Priority Courier, Inc. from August 24, 2004 until January 19, 2007 as a full-time delivery driver. He was discharged after a customer requested that he not be allowed to make deliveries to their locations because of complaints of body odor.

The employer first addressed the issue of body odor with Mr. Brunell in January of 2006. He indicated he would try to take care of the problem. The manager indicated he smelled of sweat. He was already bathing daily but began carrying deodorant with him to use before entering customer locations. The bulk of the complaints were from customers he saw at the end of the workday. During the majority of 2006, Mr. Brunell was using a wound vacuum, an apparatus worn to remove matter that accumulates in wounds. He used deodorant in an attempt to mask the odor generated by the apparatus. The employer did not raise the issue of body odor again until the date of discharge. Mr. Brunell was away from the workplace for medical treatment for approximately three weeks between March and April and two weeks in November of 2006.

**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). Mr. Brunell was discharged because a customer requested that he not be allowed to make deliveries at their locations because of his body odor and the employer did not have any other placement for him. The administrative law judge must determine whether Mr. Brunell's body odor constituted misconduct within the meaning of the law.

Mr. Brunell provided sworn testimony that he bathed and used deodorant on a daily basis. There was nothing to detract from his credibility on the matter. He took the additional step of carrying deodorant with him once he was made aware that customers had voiced objections to his odor. It appears that, at least for some portion of the time, his odor may have been attributable to the wound vacuum. Mr. Brunell took steps to try to eliminate the odor caused by the vacuum. The employer never advised him after January of 2006 that body odor continued to be a problem. Therefore, Mr. Brunell did not know he needed to take additional steps to address the problem. The administrative law judge concludes that his problem with body odor was not one created by him and not one he could control despite his best efforts. The evidence failed to establish that he deliberately or intentionally acted in a manner he knew to be contrary to the employer's standards or interests.

After considering all of the evidence, the administrative law judge concludes that disqualifying misconduct has not been established. While the employer may have had good cause to discharge, conduct that might warrant a 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 1983). Benefits are allowed.

**DECISION:**

The representative's decision dated February 15, 2007, reference 03, is hereby reversed. Mr. Brunell was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/pjs