

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

TERRY L PATRICK
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DECKER TRUCK LINE INC
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Appeal Number: 05A-UI-03361-DT
OC: 03/06/05 R: 04
Claimant: Respondent (2)

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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Decker Truck Line, Inc. (employer) appealed a representative's March 28, 2005 decision (reference 01) that concluded Terry L. Patrick (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on April 19, 2005. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. William Fairbank, attorney at law, appeared on the employer's behalf and presented testimony from one witness, Jim Wilkins. During the hearing, Employer's Exhibits One and Two were entered into evidence. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on July 1, 2004. He worked full time as truck driver in the employer's over-the-road trucking business. His last day of work was February 9, 2005.

On February 9, the claimant arrived in the evening at the employer's Davenport, Iowa terminal. He left his rig at the terminal and took the employer's business car kept on the premises without obtaining any permission. He did not return the car that night, and by the morning of February 12, 2005 he had still not returned the car or contacted the employer with any explanation. The employer then reported the car as stolen. Later on February 12, 2005, the claimant did contact the employer, seeking to enter the premises and recover his wallet that he had left in his truck. Mr. Wilkins spoke to him at that time and informed him that the company had reported the car as stolen. The claimant asserted to Mr. Wilkins that while he had taken the car without permission on February 9, 2005, a relative had subsequently taken the car from him. Mr. Wilkins was prepared at that time to inform the claimant he was discharged for taking the car, but at that time, the claimant informed Mr. Wilkins that he was going to need some time off work to obtain substance abuse treatment.

Pursuant to the employer's policies, upon the claimant's announcement of the need for medical leave, Mr. Wilkins suspended his intended discharge and informed the claimant that a 30-day leave of absence would be granted, contingent upon the claimant's provision of documentation to support his claim that he was receiving at least counseling pending admission to a program. Mr. Wilkins followed this discussion up with written confirmation sent to the claimant on February 14, 2005, received by him on February 16, 2005. The claimant had at least three other phone discussions with Mr. Wilkins the week of February 14, 2005, in which Mr. Wilkins stressed the claimant's responsibility for getting documentation to the employer to validate the leave of absence.

The claimant had presented no documentation by February 28, 2005. Therefore, the employer considered the pending leave of absence voided for failure to satisfy the contingency, and proceeded with its intended discharge, communicated to the claimant by letter dated February 28, 2005 and received by him on March 4, 2005. Criminal charges were brought against the claimant for taking the employer's car, which were still pending as of the date of the hearing.

The claimant established a claim for unemployment insurance benefits effective March 6, 2005. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$2,106.00.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer discharged the claimant for reasons establishing work-connected misconduct. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that

warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

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).

The claimant's actions on February 9, 2005 and thereafter shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

An issue as to whether the claimant's separation could be due to gross misconduct under Iowa Code § 96.5-2-c arose during the hearing. This issue was not included in the notice of hearing for this case, and the case will be remanded for an investigation and preliminary determination on that issue. 871 IAC 26.14(5).

DECISION:

The representative's March 28, 2005 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of February 9, 2005. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant is overpaid benefits in the amount of \$2,106.00. The matter is remanded to the Claims Section for investigation and determination of the potential gross misconduct issue.

ld/sc