

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BERNARD W MAUK**  
Claimant

**FEDERAL EXPRESS CORP**  
Employer

**APPEAL NO: 10A-UI-01926-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/03/10  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated January 29, 2010, reference 01, that held the claimant was not discharged for misconduct on October 27, 2009, and benefits are allowed. A telephone hearing was held on March 23, 2010. The claimant participated. Corey Patterson, Safety Manager, and Tom Kuiper, Representative, participated for the employer. Employer Exhibits 1a thru 6c was received as evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on February 26, 1986, and last worked for the employer as a full-time DOT courier on October 23, 2009. The claimant was making a delivery to a customer-residence on October 23 when his delivery van crashed into the garage door. The claimant parked the van about 20 to 25 feet from the customer garage, exited the van, and went to the residence door. While the claimant waited for the customer to come to the door, he heard the van crash causing damage to its windshield and the door. The claimant reported the incident to the employer and after he submitted a written statement, he was suspended pending investigation.

The claimant was discharged on October 28 for employer safety policy violations and negligence in the operation of his vehicle on October 23. The claimant failed to secure his vehicle by turning off the engine, putting it in park, and applying the emergency break. The claimant was driving a replacement van rather than his regular delivery vehicle on that day, and he lacked familiarity with its operation. The claimant was in a hurry to make his scheduled deliveries and he had some difficulty in securing the van doors during the process.

## REASONING AND CONCLUSIONS OF LAW:

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.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on October 23, 2009.

The employer discharged the claimant for a single act of negligence that is not disqualifying misconduct (Henry v.IDJS, 391 NW2d 731 (Iowa App.1986)). The claimant had received no prior warning or discipline for this conduct during his 23 years of employment. While the claimant should have shut-off his delivery van, it is common knowledge that delivery employees are pressed for time to make deliveries on schedule. The claimant was operating a replacement vehicle rather than his regular delivery vehicle and his lack of familiarity was shown by his difficulty in securing its doors during delivery.

A reasonable inference is that the claimant may have inadvertently failed to properly place the vehicle in park while leaving it running, as it did not move into the garage door upon him exiting, and there was a lapse of time before it moved only 20 feet or so hitting the door (claimant moving to the residence door and waiting for the customer to answer). The policy violation(s) is the result of single act of negligence or carelessness.

**DECISION:**

The department decision dated January 29, 2010, reference 01, is affirmed. The claimant was not discharged for misconduct on October 28, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs