

**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**

**RAYMOND MATTESON
655 W JEFFERSON ST
WINTHROP IA 50682**

**EXPRESS SERVICES INC
PO BOX 720660
OKLAHOMA CITY OK 73172**

**Appeal Number: 06A-UI-00792-CT
OC: 07/31/05 R: 03
Claimant: Respondent (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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Express Services, Inc. filed an appeal from a representative's decision dated January 17, 2006, reference 01, which held that no disqualification would be imposed regarding Raymond Matteson's separation from employment. After due notice was issued, a hearing was held by telephone on February 7, 2006. Mr. Matteson participated personally. The employer participated by Kim Jenison, Staffing Consultant.

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. Matteson began working through Express

Services, Inc., a temporary placement firm, on January 6, 2003. On June 14, 2004, he was assigned to work full time for Control Container Management. During the last four months of the assignment, he was assigned to operate a forklift. On December 14, 2005, Mr. Matteson struck an overhead door while operating the forklift. He was headed towards a fuel pump when he hit a patch of water, which caused the forklift to slide into the door. There are signs posted at the workplace advising employees that they will be required to pay for damage done to doors. Mr. Matteson had not signed any document agreeing to be financially responsible for damages caused by him.

After Mr. Matteson reported the damage to the door on December 14, he was advised that he either had to pay for the damage or he did not have a job. On December 15, he notified Express Services, Inc. that he was no longer on the assignment. Mr. Matteson had not been involved in any accidents with the forklift prior to December 14. He had not received any written warnings for any matters. He had received verbal warnings when he knocked things over with the forklift. Mr. Matteson was not operating the forklift in a careless or reckless manner on December 14. His refusal to pay for the damage done to the door on December 14 was the sole reason for the separation from Control Container Management.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Matteson was separated from employment for any disqualifying reason. He filed an additional claim for job insurance benefits effective December 25, 2005 because he had been discharged from his assignment with Control Container Management. Although the employer characterized the separation as a quit, the separation was initiated by the employer's client company. Mr. Matteson was told he could not remain in the employment unless he agreed to pay for the door he damaged. 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. Matteson was released from his assignment because he refused to pay for damage done to an overhead door. He had not in any way obligated himself to pay for such damages. There was no written agreement that he would pay for damages. There was no documentation that he accepted the assignment with the understanding that he would pay for damages caused by him. Given the above circumstance, the refusal to pay for the damaged door did not constitute misconduct within the meaning of the law.

The administrative law judge has also considered whether Mr. Matteson's accident with the forklift constituted misconduct. The record does not contain testimony or evidence from any individual who witnessed the incident. Therefore, the administrative law judge cannot conclude that Mr. Matteson was driving the forklift in a careless or reckless manner on December 14. At most, he may have been negligent. An isolated instance of negligence does not constitute disqualifying misconduct. Henry v. Iowa Department of Job Service, 391 N.W.2d 731 (Iowa App. 1986). For the above reasons, the administrative law judge concludes that Mr. Matteson's accident of December 14 was not due to misconduct. Inasmuch as the employer has failed to establish disqualifying misconduct, no disqualification is imposed.

DECISION:

The representative's decision dated January 17, 2006, reference 01, is hereby affirmed. Mr. Matteson was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/pjs