

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  
226 E 4<sup>TH</sup> ST  
MILAN IL 61264

DECKER TRUCK LINE INC  
PO BOX 915  
FORT DODGE IA 50501

WILLIAM FAIRBANK  
ATTORNEY AT LAW  
317 SIXTH AVE STE 1200  
DES MOINES IA 50309

Appeal Number: 05O-UI-05953-SWT  
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, 4<sup>th</sup> 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:

The employer appealed an unemployment insurance decision dated March 28, 2005, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on June 22, 2005. The claimant participated in the hearing. William Fairbank, attorney at law, participated behalf of the employer with a witness, Jim Wilkins. Exhibits One, Two, and A were entered into evidence.

FINDINGS OF FACT:

The claimant worked full time for the employer as a truck driver from July 1, 2004 to February 9, 2005. After finishing his route on February 9, the claimant parked his truck and left the terminal with a company car without signing the vehicle out or notifying anyone that he had the car as required. When the car had not been returned by April 12, the employer reported the car as stolen. Later that day, the claimant contacted the employer about getting his wallet out of the truck. Jim Wilkins, the

vice president of safety and human resources, asked the claimant about the car. The claimant admitted he had taken the car but told Wilkins that a cousin had taken the car and he did not know where the vehicle was.

Wilkins planned to discharge the claimant for unauthorized use of a company vehicle. During their conversation, however, that claimant requested time off to receive substance abuse treatment. At that point, Wilkins did not follow through with the discharge, but instead informed the claimant that he could have a 30-day leave of absence to undergo substance abuse if he provided the employer with documentation verifying that he was entering a treatment program. This conversation was followed by a letter that the claimant received on February 16 stating that he was receiving a leave of absence contingent on him submitting documentation supporting his request. In three phone conversations Wilkins had with the claimant during the week of February 14, he stressed that the claimant needed to provide written verification for approval of his leave.

The claimant had a drug abuse assessment conducted at the Riverside Treatment Center in Moline, Illinois on February 21, but there were no beds open in the treatment center. The claimant had signed a release to allow the employer to contact the center to verify his contacts with the center. The claimant, however, failed to notify the employer about his visit to the treatment center and failed to submit any written documentation to the employer to verify his visit as of February 28, 2005. Consequently, the employer discharged the claimant on February 28 for failing to follow his supervisor's instructions to provide written documentation verifying his efforts to seek substance abuse treatment and for taking a company car without obtaining approval or signing the vehicle out.

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 claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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.

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 violation of a known work rule in talking a vehicle without authorization and his conduct in failing to comply with instructions of his supervisor to provided documentation of his efforts to arrange for treatment were willful and material breaches of his duties and obligations to the employer and substantially disregarded the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

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.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits and was overpaid \$2,106.00 in benefits for the weeks between March 6 and April 16, 2005.

There was information presented at the hearing that the claimant had pleaded guilty to some unknown criminal offense relating to taking the company car. If the employer wishes to pursue further unemployment insurance benefits sanctions under the gross misconduct statute (Iowa Code section 96.5-2-b), the employer shall present evidence to the Agency that the claimant was convicted of an indictable offense regarding the company car and ask that the matter be redetermined.

**DECISION:**

The unemployment insurance decision dated March 28, 2005, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant was overpaid \$2,106.00 in unemployment insurance benefits, which must be repaid.

saw/sc