

**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**

**JOHN S. SYKES  
1439 HENDERSON AVE APT 5  
DES MOINES IA 50316-1361**

**STANDARD PARKING CORPORATION  
c/o TALX UCM SERVICES INC  
PO BOX 283  
ST LOUIS MO 63166-0283**

**Appeal Number: 06A-UI-05779-RT  
OC: 04-30-06 R: 02  
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 for Misconduct  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Standard Parking Corporation, filed a timely appeal from an unemployment insurance decision dated May 19, 2006, reference 01, allowing unemployment insurance benefits to the claimant, John S. Sykes. After due notice was issued, a telephone hearing was held on June 21, 2006, with the claimant participating. David Meyer, location manager for the employer's operations at the Des Moines International Airport Parking Facility, participated in the hearing for the employer. The employer was represented by Ben Stephens of Mississippi Labor Consultants, Inc., working for TALX UCM Services, Inc. Employer's Exhibits One through Three were admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

The administrative law judge had some difficulty in reaching the claimant and retaining the connection. The administrative law judge did not know initially that the claimant was hospitalized at the VA Hospital. When the administrative law judge learned that the claimant was hospitalized he explained to the claimant that he would not force the claimant to have a hearing if the claimant was in the hospital. The claimant indicated that he wanted to proceed with the hearing and the administrative law judge did so and the claimant participated in the entire hearing.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibits One through Three, the administrative law judge finds: The claimant was employed by the employer as a full time shuttle bus driver from November 2, 2005 until he was discharged on April 21, 2006 for unsafe driving. The employer provides shuttle bus transportation around the Des Moines International Airport and the claimant drives one of the shuttle buses. The incident that gave rise to the claimant's discharge occurred on April 17, 2006, when the claimant, while operating a shuttle bus with passengers, almost forgot to make a turn and then turned very sharply jamming a passenger's shoulder into the shuttle window. Another passenger was almost thrown out of his seat. The claimant then made another fast turn causing additional pain to the passenger who had injured his shoulder. The passenger's statement appears at Employer's Exhibit One and was corroborated to the employer by the oral statement of another passenger. When confronted by the employer, the claimant indicated that if he did not exceed the speed limit he did not feel that he was driving unsafely. The claimant was then suspended on April 18, 2006 and discharged on April 21, 2006.

The claimant received a written warning on March 3, 2006 as shown at Employer's Exhibit Three. On that occasion the claimant was stopped at a stop sign facing him but did not yield to oncoming traffic and honked his horn and pulled out into the oncoming traffic holding his hand out as if to stop the oncoming traffic. The oncoming traffic at that point does not face a direct stop sign. The claimant also received a written warning and a one-day suspension on March 20, 2006 also as shown at Employer's Exhibit Three. On this occasion the claimant received a warning and suspension because he failed to wait for passengers to sit down before proceeding and then also failed to use his turn signals. The complaining passenger even asked the claimant to use the turn signals but the claimant did not do so. The claimant also received several verbal warnings about his driving. Pursuant to his claim for unemployment insurance benefits filed effective April 30, 2006, the claimant has received unemployment insurance benefits in the amount of \$792.00 as follows: \$132.00 per week for six weeks from benefit week ending May 6, 2006 to benefit week ending June 10, 2006.

#### REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. He is.

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 parties agree, and the administrative law judge concludes, that the claimant was suspended on April 18, 2006 and then discharged on April 21, 2006. Whenever a claim is filed and the reason for the unemployment is the result of a disciplinary layoff or a suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Accordingly, the administrative law judge concludes that the claimant was effectively discharged on April 18, 2006. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct.

The employer's witness, David Meyer, location manager for the employer's location at the Des Moines International Airport parking facility, credibly testified that the claimant was discharged for unsafe driving and cited three specific examples as set out in the Findings of Fact. Concerning the sharp turns on April 17, 2006, the claimant conceded that he made the turns late and that it was "stupid" and that he was not thinking and he should not have attempted the

turns. The administrative law judge agrees. The claimant testified that he was on new medication but even the claimant conceded that it was no excuse for such driving behavior and the administrative law judge again agrees. Concerning the incident giving rise to the written warning on March 3, 2006, the evidence establishes that the claimant failed to yield at a stop sign. The claimant testified that the other vehicle had to stop but this was directly refuted by Mr. Meyer. Even the claimant eventually conceded that most of the time he would let the oncoming traffic go but on this occasion he held up his hand and pulled out into oncoming traffic. Even assuming that the other vehicle had a stop sign, it is unsafe to pull out in the front of oncoming traffic rather than wait and yield until the oncoming traffic has gone by. Concerning the incident giving rise to the written warning on March 20, 2006, the administrative law judge concludes that the claimant did begin operating the shuttle bus before the passengers were seated and also failed to use his turn signal. Even the claimant testified that he should spend more time looking around and checking the passengers to be sure they were seated. Later the claimant even conceded that he might have forgotten to use a turn signal. On the record here, although it is a close question, the administrative law judge concludes the claimant's driving and the three particular incidents in question were deliberate acts or omissions constituting a material breach of his duties and obligations arising out of his worker's contract of employment and evince a willful or wanton disregard of the employer's interests and are disqualifying misconduct for those reasons. Even more compelling, the administrative law judge concludes that the claimant's driving and the incidents in question were carelessness or negligence in such a degree of recurrence also as to establish disqualifying misconduct. Not only did the claimant receive the written warnings discussed above and as shown at Employer's Exhibit Three but the claimant also received several verbal warnings about his driving.

In summary, and for all of the reasons set out above, the administrative law judge concludes that the claimant's operation of the shuttle bus was unsafe and was disqualifying misconduct. Therefore, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until, or unless, he requalifies for such benefits.

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.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$792.00 since separating from the employer herein on or about April 18, 2006 and filing for such benefits effective April 30, 2006. The administrative law judge further concludes that the claimant is not entitled to these benefits and is overpaid such

benefits. The administrative law judge finally concludes that these benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of May 19, 2006, reference 01, is reversed. The claimant, John S. Sykes, is not entitled to receive unemployment insurance benefits, until, or unless, he requalifies for such benefits, because he was discharged for disqualifying misconduct. He has been overpaid unemployment insurance benefits in the amount of \$792.00.

kkf/pjs