

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RICHARD E CASHMAN**  
Claimant

**APPEAL NO. 07A-UI-08641-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FEDERAL EXPRESS CORP**  
Employer

**OC: 08/05/07 R: 0 2**  
**Claimant: Respondent (2)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, Federal Express, filed an appeal from a decision dated September 7, 2007, reference 02. The decision allowed benefits to the claimant, Richard Cashman. After due notice was issued, a hearing was held by telephone conference call on September 25, 2007. The claimant participated on his own behalf. The employer participated by Operations Manager Teresa Valenta and was represented by TALX in the person of Bill Stasek. Exhibits One, Two, Three and Four, were admitted into the record.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Richard Cashman was employed by Federal Express from June 30, 2006 until August 2, 2007, as a part-time ramp transport driver. At the time of hire he received a copy of the employee handbook. The disciplinary policy calls for discharge of any employee who receives three written warnings in a floating 12-month period.

On January 17 and May 18, 2007, Mr. Cashman received written warnings for failure to properly secure containers on a wheeled dolly, causing them to fall off. As the driver it was his responsibility to make sure the locks on the metal containers are secure before moving the dolly out the airplane. He was told his job was in jeopardy if there were any further disciplinary actions.

On August 1, 2007, the claimant again failed to secure the container on the dolly and it fell off. He reported the incident to Operations Manager Teresa Valenta and said, "I'm probably fired." She stated she was not sure and would let him know the next day after she consulted with her supervisor and the human resources department. The incident resulted in a third warning and the claimant was discharged on August 2, 2007.

Richard Cashman filed a claim for unemployment benefits with an effective date of August 5, 2007. The records of Iowa Workforce Development indicate no benefits have been paid as of the date of the hearing.

**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 claimant had been advised his job was in jeopardy as a result of his failure to perform the essential functions of his job and secure the containers on the dolly. In spite of the warnings the claimant again failed to secure the container and again it dropped off the dolly. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and is conduct not in the best interests of the employer. The claimant is disqualified.

**DECISION:**

The representative's decision of September 7, 2007, reference 02, is reversed. Richard Cashman is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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