

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMES A MIDTHUN**  
Claimant

**APPEAL NO. 11A-UI-06141-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SCHNEIDER NATIONAL CARRIERS INC**  
Employer

**OC: 02/21/10  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Employer filed a timely appeal from a representative's decision dated April 25, 2011, reference 06, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on June 6, 2011. Claimant participated personally. The employer participated by Ms. Jodi Jordan. Employer's Exhibits One through Four were received into evidence.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: James Midthun was employed by Schneider National Carriers, Inc. from December 10, 2010 until February 16, 2011 when he was discharged from employment. Mr. Midthun was employed as a full-time over-the-road tractor/trailer driver and was paid by the mile. His immediate supervisor was his dispatcher.

The claimant was discharged on February 16, 2011 after the claimant was observed making a "U-turn" outside one of the Schneider National Carriers' facilities. Because U-turns are prohibited under company policy, a decision was made to terminate Mr. Midthun from his employment.

On that day, the claimant had been instructed to pick up an empty trailer at a different location. Mr. Midthun believed that he was to take an empty trailer with him to exchange. Upon leaving the Schneider facility he was informed by the company dispatcher to "turn around right where you are." Because Mr. Midthun had been given that specific directive, he made a U-turn outside the Schneider facility gates approximately 100 feet from any public thoroughfare. Although the claimant was aware of the company policy, he did not believe it applied under the circumstances and followed the specific directive that had been given to him by his supervisor.

## REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is not.

Iowa Code § 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 employer has the burden of proof in this matter. See Iowa Code § 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In this instance the evidence establishes that Mr. Midthun did not intentionally violate the company rule prohibiting drivers from making "U-turns" but did so in his reasonable belief that he had been specifically directed to do so by his supervisor. The turn was negotiated in an area adjacent to the Schneider National Carriers' facility at approximately 100 feet from any public thoroughfare.

The question before the administrative law judge is not whether the employer has a right to discharge for this reason but whether the discharge is disqualifying under the provisions of the Employment Security Law. While the decision to terminate Mr. Midthun may have been a sound decision from a management viewpoint, the evidence in the record does not establish sufficient intentional disqualifying misconduct to warrant the denial of unemployment insurance benefits. The claimant believed that he was acting reasonably based upon the specific instructions that had been given to him at that time by his supervisor. The claimant followed the directive to "turn around right where you're at." Benefits are allowed, providing the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated April 25, 2011, reference 06, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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