

**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**

**Appeal Number: 06A-UI-07691-DT
OC: 06/11/06 R: 03
Claimant: Respondent (2)**

**DUJUAN D MERKSON
2005 TAYLOR DR
IOWA CITY IA 52240-7053**

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.

**DAYTON FREIGHT LINES INC
c/o TALX EMPLOYER SERVICES
PO BOX 283
ST LOUIS MO 63166-0283**

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:

Dayton Freight Lines, Inc. (employer) appealed a representative's July 26, 2006 decision (reference 07) that concluded Dujuan D. Merkson (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 16, 2006. The claimant participated in the hearing. Ed Schmidt appeared on the employer's behalf and presented testimony from one other witness, Kelly Floyd. Based on the evidence, the arguments of the parties and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on October 6, 2005. He worked part-time (25-30 hours per week) as a dock worker at the employer's trucking business. His last day of work was June 15, 2006. The employer discharged him on that date. The stated reason for the discharge was repeated carelessness.

The claimant normally worked the twilight shift beginning from between 2:00 p.m. and 4:00 p.m. His supervisor as of February 15, 2006 was Ms. Floyd, the outbound supervisor. He had many prior warnings prior to that date, but upon becoming his supervisor, she told him they would begin with a clean slate. Either she or Mr. Schmidt, the center manager, gave the claimant several verbal warnings after February 15 about paying attention to his work and documentation. On April 28, 2006, Ms. Floyd gave the claimant a written warning advising him that he had too many incidents of failing to follow procedures and that if there were further problems he would be discharged. However, on May 18 he was again given a verbal warning for failing to follow instructions and again a verbal warning on May 25 for failing to follow proper documentation procedures.

On June 13, 2006, the claimant erroneously loaded three skids that were supposed to be loaded onto a trailer destined for Cincinnati, Ohio, onto a trailer destined for Chicago, Illinois. He also had marked a manifest to report that another shipment was being sent to Milwaukee, Wisconsin. The shipment had actually been correctly loaded on a trailer for shipment to Chicago. These were typical of the types of errors the claimant had made in the past for which he had been warned. The employer observed that sometimes the claimant could do the job very well and other times it appeared that he was distracted and not paying attention to his work. The claimant asserted that the errors could have been due to mislabeling of dock doors or the work volume. However, while there had been an instance where dock doors had not been properly labeled earlier in the spring, Ms. Floyd stated that there were no such issues in June. Further, the volume of outbound shipping bills that were handled on June 13 as well as the total weight volume was about 65 percent of the number handled on a busy day.

The claimant established a claim for unemployment insurance benefits effective June 11, 2006. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$873.00.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

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.

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 focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer's interest, or
 2. The employee's duties and obligations to the employer.

The claimant's repeated carelessness in performing job functions he knew how to complete properly shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Sellers v. Employment Appeal Board, 531 N.W.2d 645 (Iowa App. 1995). The employer discharged the claimant for reasons amounting to work-connected misconduct.

Iowa Code § 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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's July 26, 2006 decision (reference 07) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of June 15, 2006. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant is overpaid benefits in the amount of \$873.00.

ld/cs