

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KENNETH W LORENZ**  
Claimant

**APPEAL NO. 06A-UI-11231-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GRAY TRANSPORTATION INC**  
Employer

**OC: 10/29/06 R: 04  
Claimant: Appellant (4)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Kenneth Lorenz (claimant) appealed a representative's November 15, 2006 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he had voluntarily quit employment with Gray Transportation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 7, 2006. The claimant participated personally. The employer participated by Darrin Gray, President. The claimant offered one exhibit which was marked for identification as Exhibit A. Exhibit A was received into evidence.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct and whether he is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 23, 2003, as a full-time truck driver. In order for the claimant to work as a truck driver he had to obtain a medical certificate from a physician.

On February 24, 2006, the claimant was injured when he fell at work. He reported the injury to the employer and was released to return to work without restrictions. He continued to work in an unrestricted fashion until July 27, 2006, when he left for vacation.

On or about August 7, 2006, the claimant visited his personal physician. The claimant's physician did not advise the claimant that he should not work due to shakiness and the condition of the claimant's knees. The claimant's physician told the claimant to see the employer's physician.

On August 10, 2006, the claimant saw the employer's physician. The physician reported that while the claimant had reduced his weight from 700 pounds, he was still morbidly obese,

weighing in excess of 400 pounds. He was able to walk only with great difficulty. The claimant had tremors, shaking and weakness. He had knee issues that could have been caused by or aggravated by the February 2006 fall. The employer's physician would not issue the medical certificate necessary for the claimant to continue driving a commercial vehicle.

The claimant is restricted to walking or standing for less than four to eight minutes each hour. He cannot climb or kneel. He cannot operate a pedal or machine with his right leg. The claimant wants to perform a job where sitting is required but no work is available with the employer.

During the claimant's employment the employer allowed the claimant to drop all paperwork in an exterior slot so the claimant could drive his car to deliver paperwork. The employer allowed the claimant to park his personal vehicle in the truck lot because the claimant could not walk to his truck from the regular parking lot.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was separated from employment because the employer's physician would not allow him to work. Part of the reason the claimant was unable to work was because of a work-related injury that aggravated the claimant's preexisting condition. The employer discharged the claimant and has the burden of proof to show misconduct. The employer did not provide any evidence of misconduct at the hearing. Consequently, the employer did not meet its burden of proof to show misconduct. The claimant is not disqualified from receiving unemployment insurance benefits.

The administrative law judge finds that the claimant is not able and available for work.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

871 IAC 24.23(35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

Inasmuch as the injury was work-related and the treating physician has not released the claimant to return to work without restriction, the claimant has not established his ability to work. Benefits are withheld until such time as the claimant obtains a medical release to return to some type of work of which he is capable of performing given any medical restrictions.

**DECISION:**

The representative's November 15, 2006 decision (reference 01) is modified in favor of the appellant. The claimant was discharged. Misconduct has not been established. The claimant is not disqualified from receiving benefits. The claimant is not able to work and available for work. Benefits are withheld until such time as the claimant obtains a medical release to return to work.

---

Beth A. Scheetz  
Administrative Law Judge

---

Decision Dated and Mailed

bas/css