

**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**

**DONALD E LUNCSFORD JR
PO BOX 57451
DES MOINES IA 50317-7451**

**OZARK AUTOMOTIVE DISTRIBUTORS INC
ATTN EMILY TERRY
PO BOX 1156
SPRINGFIELD MO 65801-1156**

**Appeal Number: 05A-UI-01759-RT
OC: 01-16-05 R: 02
Claimant: Respondent (1)**

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.

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, Ozark Automotive Distributors, Inc., filed a timely appeal from an unemployment insurance decision dated February 15, 2005, reference 01, allowing unemployment insurance benefits to the claimant, Donald E. Luncsford, Jr. After due notice was issued, a telephone hearing was held on March 7, 2005, with the claimant participating. Sarah Deutsch, Human Resources Supervisor, participated in the hearing for the employer. Marcus Boyer was available to testify for the employer but not called because his testimony would have been repetitive and unnecessary. Employer's Exhibit One and Claimant's Exhibit A were admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibit One and Claimant's Exhibit A, the administrative law judge finds: The claimant was employed by the employer as a full-time outbound material handler from August 21, 2000 until he was discharged on January 18, 2005. The claimant was discharged for unsatisfactory job performance. The employer expected the claimant to meet a productivity standard of at least 76 percent of the parts he was supposed to pull. However, the claimant's productivity was at 73 percent. This was the only reason for the claimant's discharge. The claimant had been assigned to the carousel beginning in August 2001 for approximately two and one-half to three years and had done well there although the employer believes the claimant was making some errors. The claimant was then moved to the highboy in August 2004. The claimant was unable to meet the standards there. He tried his hardest but he was unable to meet the employer's job requirements or standards. He requested that he be returned to the carousel but instead the employer moved the claimant to pallet pick where the claimant at first met his standards but when he was moved to the slow parts, although he worked as hard as he could, he again could not meet the employer's standards. The claimant received three different corrective action forms as shown at Employer's Exhibit One culminating with the fourth corrective action form on January 18, 2005 which was his discharge. The claimant suffered stress when he was unable to reach the employer's standards and this also caused him to fail to meet the employer's standards as shown at Claimant's Exhibit A. Further, certain construction going on also inhibited the claimant from reaching the employer's standards. The claimant requested to be returned to carousel but this was denied because the employer alleged that he made errors and mistakes. Pursuant to his claim for unemployment insurance benefits filed effective January 16, 2005 the claimant has received unemployment insurance benefits in the amount of \$2,152.00 as follows: \$220.00 for benefit week ending January 22, 2005 (earnings \$182.00); and \$322.00 per week for six weeks from benefit week ending January 29, 2005 to benefit week ending March 5, 2005.

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 not.
2. Whether the claimant is overpaid unemployment insurance benefits. He is not.

The parties agree and the administrative law judge concludes, that the claimant was discharged on January 18, 2005. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. It is well established that the employer has the burden to prove disqualifying misconduct. See Iowa Code section 96.6(2) and Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (Iowa 1982) and its progeny. The administrative law judge concludes that the employer has failed to meet its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The only reason given for the claimant's discharge was his failure to reach or exceed the employer's production standard of 75 percent or more of parts pulled. The claimant only reached 73 percent. However, the claimant was doing the job to the best of his abilities and was working as hard as he could, trying his hardest. In August 2004, the claimant was moved from the carousel where he had worked for approximately two and one-half to three years successfully at least in regards to his production standards. The claimant was moved to the highboy where he was unable to meet the

employer's standards. He began to receive corrective action documents as shown at Employer's Exhibit One. This added to the claimant's stress as shown at Claimant's Exhibit A. This further impeded the claimant's ability to meet the employer's production standards. The claimant requested that he be returned to carousel, but the employer denied that and rather moved the claimant to pallet pick. When there, the claimant first made his standards, but when assigned to the slow parts area he was unable to meet those standards even though he was working as hard as he could. The claimant credibly testified that his stress was impeding his ability to make the standards as was certain construction going on at the employer's location. The claimant was then discharged.

The administrative law judge concludes based on the record here that there is not a preponderance of the evidence of any deliberate acts or omissions on the part of the claimant constituting a material breach of his duties and obligations arising out of his workers contract of employment or that evince a willful or wanton disregard of the employer's interest or that are carelessness or negligence in such a degree of recurrence any of which would establish disqualifying misconduct. Rather, the evidence establishes that the claimant's behavior was mere inefficiency, unsatisfactory conduct, or failure in good performance as a result of inability or incapacity and this is not disqualifying misconduct. It is true that the claimant received three corrective action documents prior to his discharge but this merely increased the stress and further inhibited the claimant from reaching the production standards. The claimant credibly testified that he was doing the work as best he could and even requested to be returned to where he had been successfully working but was denied. Accordingly, the administrative law judge concludes that the claimant was discharged but not for disqualifying misconduct and, as a consequence, he is not disqualified to receive unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment insurance benefits, and misconduct, to support a disqualification from unemployment insurance benefits, must be substantial in nature. Fairfield Toyota, Inc. v. Bruegge, 449 N.W.2d 395, 398 (Iowa App. 1989). The administrative law judge concludes that there is insufficient evidence here of substantial misconduct on the part of the claimant to warrant his disqualification to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant, provided he is otherwise eligible.

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 \$2,152.00 since separating from the employer herein on or about January 18, 2005 and filing for such benefits effective January 16, 2005. The

administrative law judge further concludes that the claimant is entitled to these benefits and is not overpaid such benefits.

DECISION:

The representative's decision dated February 15, 2005, reference 01, is affirmed. The claimant, Donald E. Luncsford, Jr., is entitled to receive unemployment insurance benefits, provided he is otherwise eligible, because he was discharged but not for disqualifying misconduct. As a result of this decision, the claimant has not been overpaid any unemployment insurance benefits arising out of his separation from the employer herein.

sc/sc