

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TOBY E EINCK**  
Claimant

**APPEAL NO: 10A-UI-00359-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**UNITED PARCEL SERVICE**  
Employer

**OC: 04/12/09**

**Claimant: Respondent (5)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(9) – Suspension or Disciplinary Layoff

**STATEMENT OF THE CASE:**

United Parcel Service (employer) appealed a representative's December 31, 2009 decision (reference 02) that concluded Toby E. Einck (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 16, 2010. The claimant participated in the hearing. Ken Dlhly appeared on the employer's behalf. 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 or suspended for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on July 6, 1995. He works full time as a package driver out of the employer's Decorah, Iowa distribution center. His last day of work prior to December 14, 2009 was November 7, 2009. The employer suspended him pending investigation on that date, and informed him by letter dated November 11, 2009 that he was discharged. The reason asserted for the discharge was a serious accident which occurred on November 7, exceeding \$4,400.00 in damage, a disciplinary threshold for the employer.

The claimant was driving his delivery truck south on a two-way highway, observing a proper following distance behind a car and traveling either at or slightly below the speed limit. The car suddenly slowed and pulled halfway onto the shoulder and stopped; the car had hit a deer. The claimant braked but was unable to come to a complete stop before hitting the back of the car. He was unable to pull into the left hand lane as there was an oncoming vehicle. The impact of the claimant's truck hitting the stopped car caused \$5,775.00 in damage to the truck and \$2,185.00 damage to the stopped car. The law enforcement who responded to the scene concluded it was a no-fault accident and issued no citations. The claimant had no prior accidents. However, because the dollar amount of the damage exceeded the \$4,400.00

threshold and it was in a rear-ending context, the employer determined to discharge the claimant.

The claimant grieved the discharge, and a settlement was reached under which the termination was converted to a suspension. He returned to work on December 14, 2009.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer has suspended or 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 suspended or discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a. For purposes of unemployment insurance eligibility, a suspension is treated as a temporary discharge and the same issue of misconduct must be resolved. 871 IAC 24.32(9).

In order to establish misconduct such as to disqualify an employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging or suspending the claimant is the November 7 accident. Under the circumstances of this case, the claimant's involvement in the accident was at worst the result of inefficiency, unsatisfactory conduct, inadvertence or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. The claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's December 31, 2009 decision (reference 02) is modified with no effect on the parties. The employer discharged or suspended the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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