

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRUCE W MEINCKE**

Claimant

**APPEAL NO. 10A-UI-11507-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CLAUSEN SUPPLY COMPANY**

Employer

**OC: 06/20/10**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Employer filed a timely appeal from a representative's decision dated August 11, 2010, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on October 28, 2010. Claimant participated personally. The employer participated by Ms. Ann Dehner, Dispatcher; Mr. Larry Maring, Operations Manager; and Mr. Robert Hunnicut, Mechanic.

**ISSUE:**

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

**FINDINGS OF FACT:**

The administrative law judge, having considered the evidence in the record, finds: Bruce Meincke was employed as an over-the road tractor trailer driver for Clausen Trucking from May 17, 2010 until June 24, 2010 when he was discharged for unsatisfactory performance. The claimant's immediate supervisor was Ann Dehner.

The claimant was discharged when the employer concluded that he had had too many driving issues during his short period of employment with the company. Mr. Meincke was hired on a sixty-day probationary period. During the probationary period the employer assesses new drivers to determine whether they have the qualities necessary to continue in employment with the company.

During his short period of employment the company noted that it had been reported that Mr. Meincke had failed to report a backing accident on one occasion and that it appeared that the claimant had damaged the front bumper of the truck on another occasion. Mr. Meincke was unaware that he had backed into a grain probe at a dispatch location. Mr. Meincke had observed the area that he was backing into before doing so and did not realize that he had backed too far causing contact with the grain probe. No damage was caused to the probe or to company equipment. Mr. Meincke was unaware that he had caused any damage to the front bumper of the truck and the claimant had observed no damage to that portion of the vehicle.

The final incident that caused the decision to terminate the claimant occurred on June 22, 2010. On that morning the claimant had a mechanical problem when his tractor trailer until lost air and he was required to pull into a off-road area for repairs. The truck became mired. After repairs were complete Mr. Meincke did not wish to continue the trip because approximately two to three hours had elapsed. When instructed to do so, Mr. Meincke made the delivery. While repairs were being made the claimant had urinated on the far side of the truck. Mr. Meincke's urination was observed by the mechanic working on the truck who reported it as being inappropriate. Based upon the totality of the number of incidents that had occurred during the claimant's approximate one month of employment, a decision was made to terminate Mr. Meincke from his employment with Clausen Trucking.

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

For the reasons that follow the administrative law judge concludes that the evidence in the record is not sufficient to warrant the denial of unemployment insurance benefits.

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.

871 IAC 24.32(5) provides:

(5) Trial period. A dismissal, because of being physically unable to do the work, being not capable of doing the work assigned, not meeting the employer's standards, or having

been hired on a trial period of employment and not being able to do the work shall not be issues of misconduct.

The evidence in this case shows that the employer made a management decision not to continue Mr. Meincke's employment based upon a number of relatively minor incidents that caused concern to the employer during the short period of time that Mr. Meincke was employed by the company.

The company believed that Mr. Meincke had not reported two driving incidents in which the claimant had backed into a grain probe and/or had damaged the front bumper of his tractor trailer unit. Mr. Meincke was not aware that he had made contact in the backing incident and denies striking any object that would have caused the front bumper to become bent inward. During the final incident Mr. Meincke expressed some displeasure in having to continue on his dispatch after an approximate three-hour delay, but ultimately delivered the load as directed. The claimant's urination in the general proximity of another worker may have been in poor taste, however, it did not rise to the level of intentional misconduct.

The question before the administrative law judge is not whether the employer has a right to discharge an employee for these reasons but whether the discharge is disqualifying under the provisions of the Employment Security Law.

While the decision to terminate Mr. Meincke may have been a sound decision from a management viewpoint, evidence of misconduct sufficient to warrant the denial of unemployment insurance benefits has not been shown. The claimant was discharged due to unsatisfactory performance during a trial period. Benefits are allowed providing the claimant meets all other eligibility requirements of Iowa law.

**DECISION:**

The representative's decision dated August 11, 2010, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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