

**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**

**JACK COWEN
PO BOX 276
BONDURANT IA 50035**

**CONTRACT TRANSPORT INC
PO BOX 1575
DES MOINES IA 50306**

**Appeal Number: 04A-UI-03322-HT
OC: 02/29/04 R: 02
Claimant: Appellant (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

STATEMENT OF THE CASE:

The claimant, Jack Cowen, filed an appeal from a decision dated March 22, 2004, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on April 14, 2004. The claimant participated on his own behalf. The employer, Contract Transport, participated by Corporate Treasurer Jeane Nible. Exhibit One was admitted into the record.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Jack Cowen was employed by Contract Transport from October 23, 2002 until December 5, 2003. He was a full-time over-the-road driver.

Mr. Cowen received a final warning on March 23, 2003, for falsifying his logbooks. The employer's trucks are equipped with satellite equipment which track the location of the vehicle. In addition, drivers are to keep a hand-written log in the truck. An audit by Safety Director James Nible in March 2003 revealed substantial discrepancies. The satellite logs and the hand written logs showed several hours' difference regarding location. He was advised his job was in jeopardy if there were any further discrepancies of this extent.

On December 4, 2003, a dispatcher, Jason, sent a satellite message to the claimant at 9:39 a.m. to call into dispatch. The claimant did not respond and a second message was sent at 11:27 a.m. and the claimant still did not respond. Mr. Cowen did not send a reply message until 2:01 a.m. on December 5, 2003, and it was only a "canned" response via satellite indicating the load had been delivered. The same day Mr. Nible discovered further discrepancies in the claimant's log book. He discharged the claimant for insubordination and failure to keep his logbooks accurate.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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 claimant had been advised his job was in jeopardy as a result of his inaccurate log books. Failure to keep the logbooks accurate could result in negative consequences for both the employer and the driver from the Department of Transportation. In addition, the claimant refused to contact his dispatcher for over 14 hours after being asked to do so. Mr. Cowen maintained it was because he did not want to take another load because it would “put him out of hours” but there was no way for him to know what the dispatcher wanted when he refused to return the call. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative’s decision of March 22, 2004, reference 01, is affirmed. Jack Cowen is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible.

bgh/kjf