

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROBERT A GROSSMAN**  
Claimant

**APPEAL NO. 10A-UI-00434-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CONTRACT TRANSPORT INC**  
Employer

**Original Claim: 11-29-09  
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the December 30, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 17, 2010. The claimant did participate along with his witness, Dave Gibbons. The employer did participate through Allen Bergman, Human Resources Director, and (representative) Jeane Nible, Treasurer. Employer's Exhibit One was received.

**ISSUE:**

Was the claimant discharged for work-related misconduct?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as an over-the-road driver, full-time, beginning July 1, 2005, through November 23, 2009, when he was discharged. The claimant routinely went to a central location to pick up trailers to pull into a customer's location to pick up a load. He admits it was his responsibility to check the trailer to make sure it was in good shape and suitable for the load. On two prior occasions, the claimant had been disciplined for failure to perform the pre-trip inspection or to insure the trailer was operational. On one occasion, the claimant did not release the brakes on the trailer, resulting in replacement of tires on the trailer. On another occasion, he reported that the "glad hand" was not working correctly. The service operator told him to check and make sure it was not reversed. The claimant assured the service man he had and at hearing admitted it was cold outside and he did not want to get out of the truck. When the service man arrived, he found the "glad hands" were simply reversed as he suspected. Had the claimant examined the trailer as he was to do in the pre-trip trailer inspection, or even when instructed to do so by the service man, he would have discovered the problem.

On November 12 the claimant took a trailer to Nestlé's to pick up a load. Nestlé, a food producer, rejected the trailer because the scuff guard had fallen off inside the trailer and because there was yellow powder all over the floor of the trailer. His failure to do an inspection of the trailer cost the employer the load. When later questioned by Mr. Bergman, the claimant

told him he had not seen inside the trailer as his flashlight did not work. At hearing, the claimant said he had used a flashlight inside the trailer.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

The claimant knew it was his responsibility to check the trailer for damage and suitability before taking it to a customer's location. The claimant did not do so on November 12 when he hauled an unsuitable trailer to Nestlé's, resulting in a lost load for the employer. The claimant had been warned on two prior occasions to completely and adequately perform the pre-trip inspections. Claimant's repeated failure to adequately and fully perform his job duties after having established the ability to do so is evidence of his willful intent not to do so and is misconduct. Benefits are denied.

**DECISION:**

The December 30, 2009, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/kjw