

**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**

**KEVIN HOWARD
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DES MOINES IA 50317**

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

**Appeal Number: 06A-UI-01165-ET
OC: 12-04-06 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/Misconduct
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 28, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 16, 2006. The claimant participated in the hearing. Jean Nible, Corporate Treasurer; Allen Bergman, Human Resources; and Dave Reeck, Shop Foreman, participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The appeal in this case was due January 9, 2006. The claimant filed an appeal January 29, 2006.

The appeal was late because the Department sent the representative's decision to an incorrect address for the claimant and he did not receive the decision until January 26, 2006. Because the appeal was late due to Department error, the administrative law judge concludes the appeal is timely.

The claimant was employed as a full-time shop mechanic for Contract Transport from March 5, 2004 to December 6, 2005. In September 2005, the employer talked to the claimant about his performance and refusal to fuel trucks in between mechanics' jobs. On September 23, 2005, the claimant gave the employer a doctor's excuse stating he should avoid working in direct sunlight due to heart medications he was taking. On December 5, 2005, the foreman told the claimant he needed him to fuel trucks because there were no mechanics' jobs yet. The claimant refused, citing the doctor's note that said he could not work in direct sunlight. The employer argued that it was December so the sunlight was low but also that it was a cloudy day and he did not believe the note would apply under those circumstances. The claimant then stated he injured himself at work December 3, 2005, and the foreman took the claimant to the office and he was sent to see the employer's physician and was restricted to light-duty work. Upon returning to work the employer offered the claimant light-duty work on the parts inventory and the claimant refused because light-duty work paid less per hour. He then said he would fuel trucks before stating he wanted to see his own physician. On December 6, 2005, the employer asked the claimant what his doctor said and the claimant said he did not go to his doctor. The employer followed the restrictions imposed by its physician and told the claimant it had light-duty inventory work available and the claimant refused to perform the job because it was at a lower hourly rate of pay. After the parties argued the employer terminated the claimant's employment.

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 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 employer has the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant refused the light-duty work of taking inventory offered by the employer because he was upset about the wage. His injury was work-related, however, and the employer reasonably assumed it could pay less per hour for light-duty work because it expects workers' compensation will make up the difference in temporary partial disability. Therefore, the claimant's refusal to do the work offered constitutes insubordination. The claimant's actions December 6, 2005, were not an isolated incident and his conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. Consequently, the administrative law judge concludes the employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

DECISION:

The December 28, 2005, reference 01, decision is affirmed. The claimant's appeal is timely. He 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.

je/s