

**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**

**Appeal Number: 05A-UI-00303-JTT  
OC: 12/05/04 R: 01  
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.

**GARY D VANCE  
715 NW THIRD ST  
EAGLE GROVE IA 50533**

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.

**DECKER TRUCK LINE INC  
PO BOX 915  
FORT DODGE IA 50501**

**WILLIAM FAIRBANKS  
ATTORNEY AT LAW  
317 – 6<sup>TH</sup> AVE STE 1200  
DES MOINES IA 50309**

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Gary Vance filed a timely appeal from the December 28, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on January 24, 2005. The claimant did not respond to the notice of the hearing, did not provide a telephone number at which he could be reached for the purpose of participating in the hearing, and did not participate in the hearing. Decker Truck Line, Inc., was represented by attorney William Fairbanks, with witness Jim Wilkins, Vice President for Safety and Human Resources. Exhibits One through Four were received into evidence.

#### FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Vance was employed by Decker Truck Line as a full-time security guard from July 13 to December 3, 2004, when Mr. Wilkins discharged him for misconduct.

The last incident that prompted Mr. Wilkins to discharge Mr. Vance occurred on December 2, 2004. On that date, Mr. Vance worked the 3:00 p.m. to 11:00 p.m. shift. During the course of his shift Mr. Vance looked through a stack of payroll checks on a payroll clerk's desk, found his own check, and removed it from the stack. The check had not yet been signed. The check would have been issued to Mr. Vance on December 3, 2004. Though Mr. Vance was authorized to be in the payroll room, he was not authorized to sift through the payroll checks or remove his own. On the following morning, the payroll department discovered they were missing Mr. Vance's check. The payroll department was unaware that Mr. Vance had removed his check. The employer subsequently had its bank stop payment on the missing check. The employer printed a new check for Mr. Vance and issued it to him. Mr. Vance returned the new check, with a note that he already had his check. See Exhibit Three.

On December 3, Mr. Vance was again scheduled to work the 3:00 p.m. to 11:00 p.m. shift, but did not appear at the scheduled start of his shift or call in before that time. At 4:15 p.m., Mr. Wilkins contacted Mr. Vance via his answering machine and left a message for Mr. Vance to contact him within 15 minutes or the employer would consider him to have voluntarily quit his employment. Mr. Vance called back and advised that he was sick. Mr. Wilkins took the opportunity to question Mr. Vance about the prematurely removed paycheck. Mr. Wilkins admitted to taking the check, indicated he had not noticed it was not signed, and indicated he had already cashed the check. Mr. Vance had not in fact cashed the check and was subsequently unable to do so when he presented the check to a bank on December 16, 2004. See Exhibit Four. See Exhibit Four.

During the conversation on December 3, Mr. Wilkins advised Mr. Vance that he was being discharged for violation of company policy. The company policy at issue pertains to theft or inappropriate removal of company property, and is located in the employee handbook. See Exhibit One. On July 13, 2004, Mr. Vance provided a signed acknowledgment of having received the handbook and further acknowledged his obligation to become familiar with its contents. See Exhibit Two. Prior to the incident on December 2, Mr. Vance had not been reprimanded in connection with his employment with Decker Truck Line.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Vance was discharged for misconduct in connection with his employment. It does.

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).

Since Mr. Vance was discharged, the employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

The evidence in the record establishes that Mr. Vance's premature removing his paycheck without authorization was an intentional act. Mr. Vance's actions amounted to more than the mere exercise of poor judgment. In order to get to his check, Mr. Vance had to rifle through contents on a desk that he had no authority to touch. He had to rifle through checks belonging to other employees and thereby gain access to confidential information he had no authority to access. The irony is that Mr. Vance was the security guard, the person charged with safeguarding the employer's property. Mr. Vance's actions were in violation of the employer's policy. Mr. Vance acted with willful and wanton disregard of the interests of his employer. See 871 IAC 24.32-1-a. The evidence in the record establishes that Mr. Vance was discharged for misconduct in connection with his employment. Accordingly, a disqualification will enter.

DECISION:

The Agency representative's decision dated December 28, 2004, reference 01, is affirmed. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

jt/b