

**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**

**MARILYN J RIDGEWAY
119 PARK AVE S
ELDRIDGE IA 52748**

**UNITED PARCEL SERVICE
c/o TALK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 05A-UI-08466-CT
OC: 07/10/05 R: 04
Claimant: Respondent (2)**

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 for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

United Parcel Service (UPS) filed an appeal from a representative's decision dated August 4, 2005, reference 02, which held that no disqualification would be imposed regarding Marilyn Ridgeway's separation from employment. After due notice was issued, a hearing was held by telephone on September 1, 2005. Ms. Ridgeway participated personally. The employer participated by Cindy Rosen, Human Resources Manager; Pat Elders, District Labor Manager; and Keith Gardiner, District Transportation Manager. Exhibits One through Eight were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Ridgeway was employed by UPS from May 3, 1993 until July 12, 2005. She was last employed full time as a feeder driver. She was discharged for having three preventable accidents within a 12-month period. Ms. Ridgeway had been discharged in January of 1997 for having three preventable accidents within 12 months but was returned to work pursuant to a grievance decision. She had 12 preventable accidents during the 12 years she drove for UPS. She had four accidents the employer felt were not preventable. Each time a driver is involved in an accident, the employer has the driver go through re-training.

On September 30, 2004, Ms. Ridgeway jackknifed a vehicle because she turned too tightly. The incident resulted in damages in the amount of approximately \$3,000.00. On November 17, she drove off the roadway and into a ditch. She told the employer she was tired but denied that the accident was caused by falling asleep. Ms. Ridgeway claimed that she had been forced off the road by another truck. The fact that the track marks from her vehicle went straight from the roadway to the ditch caused the employer not to believe she had been forced off the road. Based on its perception that Ms. Ridgeway was giving false information regarding the matter, she was discharged. She was returned to work pursuant to a grievance. On July 8, Ms. Ridgeway was in the yard and was intending to wash a trailer. She had the trailer legs up too high to clear the framing in the wash tunnel. Therefore, damage was done to both the trailer and the wash tunnel. When she reported the matter, she was told not to move the trailer. However, she moved it anyway. The damage estimate from the incident was \$9,000.00

Ms. Ridgeway was suspended on July 8 pending a further investigation. She was notified of her discharge in a letter dated July 11, 2005. Her accident history was the sole reason for the discharge.

Ms. Ridgeway has been paid a total of \$2,256.00 in job insurance benefits since filing her claim effective July 10, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Ridgeway was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Ridgeway was discharged because of having too many accidents with the employer's vehicle. In spite of the fact that she was re-trained after each accident, she continued to have accidents that resulted in property damage. She averaged one preventable accident for each year she drove for UPS.

The administrative law judge does not believe Ms. Ridgeway deliberately caused accidents. However, her negligence was so recurrent as to manifest a substantial disregard for the employer's interests and standards. Her repeated negligence resulted in substantial financial loss to the employer in the form of property damage. The final incident involved Ms. Ridgeway's failure to make sure her vehicle could clear the wash tunnel. All she had to do to make sure there was clearance was to lower the legs on the trailer. Her failure to use due care on this occasion resulted in \$9,000.00 in damages.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that disqualifying misconduct has been established by the evidence. Accordingly, benefits are denied. Ms. Ridgeway has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated August 4, 2005, reference 02, is hereby reversed. Ms. Ridgeway was discharged by UPS for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. Ms. Ridgeway has been overpaid \$2,256.00 in job insurance benefits.

cfc/kjw