

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BENJAMIN J GRAVEL
Claimant

APPEAL NO. 09A-UI-15318-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITED PARCEL SERVICE
Employer

**Original Claim: 02-01-09
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 10, 2009, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on November 12, 2009. The claimant did participate. The employer did participate through Wayne Nicholson, Business Manager. 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 a delivery driver, full-time, beginning May 12, 2008, through July 31, 2009, when he was discharged.

On July 30, 2009, the claimant was driving company vehicle and backed into a parked car. The claimant did not report that accident, but denied that he knew he had hit the car. The claimant does now admit that he did back into the parked car, but denies that he realized he had hit the car when the accident occurred. The claimant had the backup camera and the mirrors to see out of in order to determine if an accident had happened. The damage to the parked car totaled almost two-thousand dollars and the car was pushed up onto the curb as a result of the accident. The employer investigated and determined that, based upon the amount of damage and the backup camera view, the claimant had to have known that he hit the car and chose not to report the accident for fear that he would be discharged or disciplined. The owner of the car saw the accident and reported it to the police and to the employer. The employer's pictures clearly show the damage to the parked vehicle was caused by the claimant backing into the car with the delivery truck.

The claimant had been previously disciplined in May 2009 for an avoidable accident

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.

The administrative law judge is persuaded that, based upon the amount of damages and the nature of the accident, the claimant knew when he backed into the parked car despite his denial to the contrary. The claimant had previously been warned about avoidable accidents, so he did not report this one for fear he would lose his job. The claimant's failure to report the accident is sufficient misconduct to disqualify him from receipt of unemployment insurance benefits. Benefits are denied.

Although awarded unemployment insurance benefits in the fact-finding decision, no benefits have been claimed or paid to the claimant; thus, the issue of overpayment is moot.

DECISION:

The October 10, 2009, reference 02, decision is reversed. 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. Inasmuch as no benefits were claimed or paid, no overpayment applies.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw