

**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**

**EDWARD A HUFFMAN
PO BOX 673
OZARK MO 65721-0673**

**GRAY TRANSPORTATION INC
PO BOX 2365
WATERLOO IA 50704**

**Appeal Number: 06A-UI-05743-HT
OC: 04/30/06 R: 12
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

STATEMENT OF THE CASE:

The claimant, Edward Huffman, filed an appeal from a decision dated May 23, 2006, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on June 20, 2006. The claimant participated on his own behalf. The employer, Gray Transportation, participated by President Darrin Gray.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Edward Huffman was employed by Gray

Transportation from August 4, 2005 until May 5, 2006. He was a full-time over-the-road truck driver.

On April 25, 2006, he was counseled by the employer regarding a load of meat which had been rejected by the customer. Mr. Huffman was to deliver meat on his truck to two customers. Regulations require the cargo doors of the trailer to be sealed after loading and immediately after the first delivery so there is proof the cargo had not been tampered with. All drivers are to have seals with them for such purposes. The claimant did not seal the cargo doors after the first delivery and the second customer rejected the shipment, causing a \$7,000.00 loss to the employer. Mr. Huffman maintained he did not have any seals because he had run out and he could not get any more because he was only at the main terminal once every three or four months. However, his own records establish he was at the main terminal seven times between April 3 and May 1, 2006.

On May 3, 2006, the claimant was driving his truck and passed another vehicle which was stopped after hitting a deer. He went around the other vehicle and thought he heard a tire "blow." Instead of stopping immediately, he went "a little way" down the road to a truck stop. When he pulled into a convenience store area, he exited his truck and heard what he thought was another tire blow, but discovered the trailer was on fire.

The claimant later stated he was not sure if a tire had blown or an "air bag," which refers to the air handling system for brakes and shocks in a tractor. Proper procedure in either event is to pull over immediately. Blown tires can throw tread on the highway causing damage to other vehicles, or it can damage the tractor/trailer itself. Loss of the air bag system can cause loss of braking power which could also endanger the driver and others.

Mr. Huffman reported the accident the day it happened, and was discharged the next day by President Darrin Gray.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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 claimant was guilty of two incidents of rule and policy violation, and serious negligence in the space of ten days. Both of his actions caused the employer substantial loss of revenue from damage to the truck to rejection of a cargo by a customer. The claimant knew he was to seal the cargo after the first delivery, but did not do so. If he did not have any seals it was his own responsibility because he had been at the terminal frequently enough in the past few weeks that he could have gotten some at any time.

The final incident was a failure to act in a prudent and acceptable manner and stop his truck immediately after blowing a tire. Instead he continued to travel, endangering himself and others and causing considerable damage to the employer's equipment. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of May 23, 2006, reference 01, is affirmed. Edward Huffman is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

bgh/cs