

**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**

**SHAWN C SHERWOOD
413 W 8TH ST
WASHINGTON IA 52353**

**DOUBLE C TRUCKING
3245 ELM AVE
BRIGHTON IA 52540**

**Appeal Number: 04A-UI-03419-CT
OC: 02/15/04 R: 03
Claimant: Respondent (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 for Misconduct

STATEMENT OF THE CASE:

Double C Trucking filed an appeal from a representative's decision dated March 16, 2004, reference 02, which held that no disqualification would be imposed regarding Shawn Sherwood's separation from employment. After due notice was issued, a hearing was held by telephone on April 19, 2004. Mr. Sherwood participated personally and Exhibit A was admitted on his behalf. The employer participated by Bill Clarahan, Owner. Exhibit One was admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Sherwood was employed by Double C Trucking from September 23, 2003 until February 14, 2004 as an over-the-road driver. The vehicle he drove was leased to Stutsman Transportation, Inc. (Stutsman). Stutsman made the decision to discharge Mr. Sherwood because of an altercation he had with another Stutsman driver on or about February 9, 2004.

Mr. Sherwood and the other driver, Dean Heideman, were in Oklahoma when the incident occurred. Mr. Sherwood pulled his vehicle in front on Mr. Heideman and then had to slow down because the vehicle in front of him slowed. This action apparently angered Mr. Heideman. When the two arrived at a fuel stop, Mr. Sherwood proceeded to Mr. Heideman's vehicle to apologize for having slowed down in front on him. Mr. Heideman began berating Mr. Sherwood about his driving, which angered Mr. Sherwood. Mr. Sherwood suggested he step down from his vehicle, which Mr. Heideman did. Mr. Heideman then pushed him and Mr. Sherwood walked away from the incident. When the incident was reported to Stutsman, the decision was made to discharge Mr. Sherwood.

In making the decision to discharge, Stutsman also considered the fact that Mr. Sherwood had been late in delivering a load on October 31 and failed to have the proper number of placards on his vehicle identifying his cargo as hazardous material. The load was delayed because Mr. Sherwood was stopped by DOT and detained for over an hour. Prior to taking the load, he had notified Stutsman that the appropriate number of placards was not on the vehicle.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Sherwood 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 in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Before a disqualification from benefits may be imposed, the evidence must establish that the final act which triggered the discharge constituted misconduct within the meaning of the law. See 871 IAC 24.32(8). In the case at hand, the final act which caused Mr. Sherwood to be discharged was the altercation with Mr. Heideman in Oklahoma. He approached Mr. Heideman with the best of intentions, to apologize for having slowed down in front of him. It was Mr. Heideman who escalated the incident into an altercation and it was he who initiated physical contact with Mr. Sherwood. Mr. Sherwood did not participate in a fight, he walked away from the situation. The evidence fails to establish that he engaged in any misconduct in the incident. It is concluded, therefore, that the final act was not an act of misconduct.

Even if the conduct of October 30 were to be considered misconduct, it would still not be a current act in relation to the February 14 discharge date. After considering all of the evidence, the administrative law judge concludes that the employer has failed to satisfy its burden of proving disqualifying misconduct. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, benefit are allowed.

DECISION:

The representative's decision dated March 16, 2004, reference 02, is hereby affirmed. Mr. Sherwood was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/kjf