

**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**

**JOHN M SCHONROCK
1111 W 14TH ST
SIOUX CITY IA 51103**

**TOBA OF IOWA LLC
P A BRANNGER FOOD SERVICE
900 CLARK ST
SIOUX CITY IA 51101**

**Appeal Number: 05A-UI-04591-CT
OC: 04/03/05 R: 01
Claimant: Appellant (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

STATEMENT OF THE CASE:

John Schonrock filed an appeal from a representative's decision dated April 25, 2005, reference 01, which denied benefits based on his separation from Toba of Iowa. After due notice was issued, a hearing was held by telephone on May 18, 2005. Mr. Schonrock participated personally. The employer participated by Jim Higley, Vice President for Sales and Marketing/General Manager, and Dale Hughes, Transportation/Operations Manager.

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. Schonrock was employed by Toba of Iowa from

September 20, 2004 until March 17, 2005. He worked full time as a lead person. The employer provides food service to restaurants, schools, and institutions. Mr. Schonrock was discharged after he received a series of warnings.

Mr. Schonrock and another individual both received written warnings on October 19, 2004 when frozen food was left out overnight, causing it to thaw. Mr. Schonrock was still in training and the other individual involved in the incident was in a supervisory position over him. Mr. Schonrock received another written warning on December 9 because he failed to clean up after his shift. On January 23, 2005, he received a written warning because another individual on his shift had left the facility on two occasions for an extended period of time without clocking out as required. Mr. Schonrock was a lead person at that time but was not in a supervisory position. He had discussed the individual's absence from work with his supervisor. The employer felt Mr. Schonrock should have disciplined the individual for leaving without clocking out.

On February 27, 2005, Mr. Schonrock failed to set the temperature correctly on a refrigerated trailer, causing produce in the unit to freeze. He was under the impression that the driver would set the temperature. The final incident that caused his discharge was the fact that produce was again frozen on or about March 8, 2005. The produce froze because the doors on the trailer were left open. The trailer was backed up to the dock and the doors could not be closed unless the trailer was moved. Mr. Schonrock and a coworker attempted to move the trailer but the brakes locked up. The temperature inside the unit was set correctly. Mr. Schonrock did not call anyone to advise that there was a problem because he knew the driver of the truck would be there within two hours of when Mr. Schonrock was leaving. Because of this final incident, Mr. Schonrock was discharged.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Schonrock 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). Mr. Schonrock was discharged after he received several warnings regarding his job performance. He was not solely responsible for the fact that frozen food was allowed to thaw in October. He had only been in the employment for one month and was not the supervisor. His failure to clean adequately after his shift on December 9 was an isolated instance of such conduct. Because he was not the supervisor in December, it was not his responsibility to discipline the individual for taking an extended lunch break without clocking out. Mr. Schonrock did bring the matter to the attention of the supervisor. The administrative law judge concludes that the above matters did not constitute acts of misconduct.

There were two occasions on which produce froze. On the first occasion, Mr. Schonrock may have been negligent in failing to set the temperature on the refrigerated unit. The second incident represented a good-faith error in judgment. The temperature was set correctly on the unit but the doors were left open. Mr. Schonrock attempted to move the trailer so he could close the doors but was unable to do so. His error was in not contacting someone to alert them to a potential problem. However, he knew the driver would be coming to move the trailer within two hours. At most, he used poor judgment in not contacting someone.

The employer's evidence establishes that Mr. Schonrock was negligent on one occasion and used poor judgment on another occasion. These incidents do not rise to the level of

disqualifying misconduct as they do not represent a substantial and intentional disregard of the employer's standards or interests. 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, benefits are allowed.

DECISION:

The representative's decision dated April 25, 2005, reference 01, is hereby reversed. Mr. Schonrock was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/pjs