

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TROY D COOPER**

Claimant

**APPEAL NO. 08A-UI-09906-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DECKER TRUCK LINE INC**

Employer

**OC: 09/28/08 R: 04  
Claimant: Respondent (1)**

Section 96.5 (2)a - Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed an appeal from a representative's decision dated October 17, 2008, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice was issued, a telephone conference hearing was scheduled for and held on November 10, 2008. The claimant participated. The employer participated by William Fairbank attorney at law, and witnesses Sandy Loney and Doreen Coppinger. Exhibits One through Nine were received into evidence.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct in connection with his work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant worked for this employer from July 14, 2008, until September 26, 2008, when he was discharged from employment. Mr. Cooper was employed as a full-time loader/hosler and was paid by the hour.

A decision was made to terminate Mr. Cooper from his employment after the claimant had two on-the-job injuries to his back and the employer investigated and believed that the claimant had falsified his medical questionnaire. After being accepted for employment, Mr. Cooper was requested to complete a medical questionnaire. The claimant answered "no" to a question relating to whether he had had any injury or injuries on the job and whether he had any other injuries or illnesses not on the job that resulted in hospitalization, surgery, or lost work time. The claimant also answered "no" to a question related to having sleep disorders and taking long-term prescription medicine. Mr. Cooper answered "no" to the question: "Do you have or have you been diagnosed as having any illness or injury for which you are not seeking treatment?"

Later, following injuries that he claimed were work-related, the claimant was further examined by physicians, including physicians chosen by the company's workers' compensation insurance carrier. As a result of examinations, questioning, and a review of documents, it was determined that Mr. Cooper had been involved in a minor motor vehicle accident some 17 years before and had been diagnosed with minor "whiplash." The claimant had no further medical problems with the issue and had not been treated for the diagnosis. It was further determined that when Mr. Cooper had

gone to a physician for chest pains in the past and that he had been referred to a sleep apnea examination testing, and that during the testing it was indicated to the claimant that he may have “restless leg syndrome,” because the claimant’s leg was observed moving during sleep. The claimant reasonably did not consider this to be a diagnosis and did not seek further medical examination, treatment, or medication based upon the speculative statement.

Based upon reports of these matters, the company concluded the claimant had falsified his medical questionnaire by not indicating that he had been “diagnosed with having an illness or injury for which he was not being treated.” The company, based upon information from the workers’ compensation physician, believed that the claimant also might have a condition that prevented him from maintaining his commercial driver’s license, as patients with restless leg syndrome potentially should not participate in commercial driving due to constant movement of the legs that might be hazardous while driving.

### **REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence in the record establishes that Mr. Cooper was discharged for intentional misconduct in connection with the employment. It does not.

The evidence in the record establishes that Mr. Cooper did not intentionally falsify or misrepresent his medical condition or history when completing a medical questionnaire for the Decker companies. The claimant was not diagnosed as having sleep apnea and reasonably concluded, based upon statements made to him by the examining physician, that he had not been diagnosed with that malady, and that there only may be an issue related to restless leg syndrome, because of some movement of the claimant’s leg during sleep apnea testing. The claimant had experienced no personal problems with the medical issue and was familiar with the syndrome, as a person he knew was afflicted with it. The administrative law judge thus concludes that the claimant did not intentionally misrepresent that he had been “diagnosed as having an illness for which he was not seeking treatment.” Mr. Cooper also had reasonably concluded that the diagnosis of a minor whiplash some 17 years before, after he was involved in a minor traffic accident, also did not fit the category of being “diagnosed with an illness or injury for which he was not seeking treatment” and correctly answered in the negative to those questions. The fact that a practitioner at some point may have referenced the possibility of a medical condition does not constitute a diagnosis. The claimant was reasonable in his belief that he was truthfully answering the application questions in this matter.

The previous reference to restless leg syndrome did not constitute a diagnosis and does not in and of itself establish that Mr. Cooper is medically unqualified to drive under DOT regulations. If the claimant’s DOT certification were challenged, Mr. Cooper would have the right to be examined by other physicians and to present evidence about the condition and its affect on the claimant’s certification to drive a commercial vehicle.

The question before the administrative law judge in this case is not whether the employer has a right to discharge an employee for these reasons, but whether the discharge is disqualifying under the provisions of the Iowa Employment Security Act. While the decision to terminate Mr. Cooper may have been a sound decision from a management viewpoint, for the above-stated reasons the administrative law judge concludes the claimant did not engage in intentional disqualifying misconduct. The employer has not met its burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Conduct that may cause the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment insurance benefits in all instances. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

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.

For the reasons stated herein, the administrative law judge concludes the claimant was dismissed under non-disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

**DECISION:**

The representative's decision dated October 17, 2008, reference 01, is affirmed. Claimant was dismissed for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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