

**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**

**ISEDRO RODRIQUEZ
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**NATIONAL BY-PRODUCTS LLC
PO BOX 615
DES MOINES IA 50303 0615**

**Appeal Number: 05A-UI-07951-H2T
OC: 06-26-05 R: 03
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/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 26, 2005, reference 04, decision that denied benefits. After due notice was issued, a hearing was held on August 23, 2005. The claimant did participate. The employer did participate through Ed Frakes, Territory Supervisor.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a truck driver full time beginning April 13, 2005 through June 24, 2005, when he was discharged. On June 23 the claimant was involved in a truck accident when he drove from Walker, Iowa, to Independence, Iowa. The claimant did not put the bucket down on the truck before driving and he hit a bridge overpass and broke the bucket off the

truck. The claimant had been instructed that the bucket had to be put down and locked into position before driving the truck. The accident caused \$4,780.49 damage in parts and labor, not including the cost of transferring the truck to the shop. At hearing the claimant admitted that the accident was his fault.

This was the claimant's second accident. On April 25, 2005, the claimant rolled a truck over in the ditch, spilling out the product he was hauling. The employer had \$1,300.00 in hazardous material response costs as well as \$735.50 to replace a telephone poll.

After the claimant's first accident he was given a warning telling him that if he had another accident, he could be discharged.

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 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 received fair warning that the employer was no longer going to tolerate his performance and conduct. The claimant knew that he needed to be accident free in order to maintain his employment. The claimant admits that the second accident was his fault. The employer's evidence does establish that the claimant deliberately and intentionally acted in a manner he knew to be contrary to the employer's interests or standards by failing to secure the bucket of the truck. There was a wanton or willful disregard of the employer's standards. In short, substantial misconduct has been established by the evidence.

DECISION:

The July 26, 2005, reference 04, decision is affirmed. 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.

tkh/kjw