

**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**

**KEVIN J BALDWIN
410 ISABELLA ST
SIOUX CITY IA 51103**

**FRED CARLSON COMPANY
900 MONTGOMERY ST
DECORAH IA 52101**

**Appeal Number: 06A-UI-05398-CT
OC: 11/27/05 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:

Kevin Baldwin filed an appeal from a representative's decision dated May 15, 2006, reference 01, which denied benefits based on his separation from Fred Carlson Company (Carlson). After due notice was issued, a hearing was held by telephone on June 9, 2006. Mr. Baldwin participated personally. The employer did not respond to the notice of hearing.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Baldwin was employed by Carlson from June of

2003 until April 28, 2006 as a full-time truck driver and heavy equipment operator. He was discharged on April 28 as a result of events of April 27.

On April 27, the drive shaft fell out of the vehicle Mr. Baldwin was driving. The incident occurred because of a loose clamp and broken bolt. Mr. Baldwin was not responsible for maintenance of vehicles. The person who came with the front end loader to retrieve the vehicle on April 27 caused the bumper to be pulled off the vehicle. Mr. Baldwin did not assist with hooking the vehicle to the loader. When directed by a supervisor to put the keys in the proper place in the truck, Mr. Baldwin responded by saying "do it yourself, it's already done." He had not received any prior warnings. He was notified of his discharge on April 28, 2006. He was told that he was also being discharged because two track pads were damaged on an excavator on April 24 while at Standard Ready-Mix.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Baldwin 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). The administrative law judge has considered the reasons given Mr. Baldwin for the discharge. The evidence failed to establish that he was responsible for damage to either the vehicle or the excavator. The evidence did not establish that the drive shaft fell out or that the bumper was pulled off because of actions by Mr. Baldwin. There was no evidence that he was operating the excavator when the pads were damaged.

The employer contended during the fact-finding interview that Mr. Baldwin directed profanity towards a supervisor, an allegation that he denied. The employer did not participate in the hearing to provide sworn testimony on the issue. The administrative law judge found nothing to detract from Mr. Baldwin's sworn denial that he used profanity towards a supervisor. What he did say was "do it yourself, it's already done." At most, this statement represented an isolated "hot-headed" incident and not an act of deliberate misconduct.

After considering all of the evidence, the administrative law judge concludes that the employer has failed to satisfy its burden of proof in this matter. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated May 15, 2006, reference 01, is hereby reversed. Mr. Baldwin was discharged by Carlson but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/pjs