

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

DALVIN D LIEKWEG  
435 – 24<sup>TH</sup> ST SW  
MASON CITY IA 50401

OBERG FREIGHT CO  
c/o KENT OBERG  
22153 OLD HWY 169  
FT DOGE IA 50501

Appeal Number: 04A-UI-09268-HT  
OC: 09/28/03 R: 02  
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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant, Dalvin Liekweg, filed an appeal from a decision dated August 23, 2004, reference 02. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on September 21, 2004. The claimant participated on his own behalf. The employer, Oberg Freight, participated by Safety Director Joe Dodson.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Dalvin Liekweg was employed by Oberg from November 7, 1997 until July 31, 2004. He was a full-time over-the-road truck driver.

During the course of his employment the claimant was involved in ten accidents or "incidents" with company vehicles. He received verbal and written warnings notifying him the employer was not satisfied with his performance. The final warning was given in June 2004, and informed him his job was in jeopardy.

On July 28, 2004, a customer contacted Mr. Dodson and informed him the claimant had been involved in another accident. Mr. Liekweg had knocked over a lighted rail road crossing signal, sheering it off completely. The claimant had not notified the safety director immediately after the accident as required. While the claimant was still on the road the employer investigated the accident and gathered information from witnesses about what had occurred. It was concluded the claimant was responsible and had not handled the truck prudently. He was discharged by Owner Ken Oberg when he returned to the terminal on July 31, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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 had been advised his job was in jeopardy as a result of his record of accidents with company vehicles. He was also advised he must report any accidents or incidents immediately to the safety director under company policy. In spite of the warning, Mr. Liekweg failed to handle the company vehicle prudently, causing damage to a railroad crossing signal, and then failed to report the resulting accident on July 28, 2004. He acknowledged he knew he was to report accidents immediately but did not offer any reasonable explanation for failing to do so other than that he "was not using [his] head." The employer has the right to expect responsible and reliable use of its equipment by its employees, and to be notified immediately of any accidents regarding those vehicles. The claimant's disregard of company policy and responsible truck operation is conduct not in the best interests of the employer. He is disqualified.

DECISION:

The representative's decision of August 23, 2004, reference 02, is affirmed. Dalvin Liekweg is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible.

bgh/s