

**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**

**MARK D HASSE
410 PIERCE ST APT 711
SIOUX CITY IA 51101-1468**

**SIOUXLAND TAXI & LIMOUSINE SERVICE
5430 HARBOR DR
SIOUX CITY IA 51111-1116**

**Appeal Number: 06A-UI-05989-S2T
OC: 05/07/06 R: 01
Claimant: Respondent (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 for Misconduct

STATEMENT OF THE CASE:

Siouxland Taxi & Limousine Service (employer) appealed a representative's May 30, 2006 decision (reference 01) that concluded Mark Hasse (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 27, 2006. The claimant participated personally. The employer participated by Marsha Bedwell, General Manager.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 14, 2006 as a full-time cab driver. The

claimant worked from 4:00 p.m. to 4:00 a.m. He finished his shift at 4:00 a.m. on April 21, 2006. The employer scheduled him to have the next two days off. As he was leaving, the dispatcher told him that he was to report for twelve hours of training at 3:00 a.m. on April 22, 2006. The claimant wondered about the timing of the training and knew he had not been paid for previous training. He had questions he wanted to ask his supervisor but he did not have her number. The claimant displayed his displeasure at having to appear for training on his day off and asked the dispatcher to tell his supervisor that he needed to speak with her prior to the training. The supervisor did not get the message and the claimant did not appear for training. Prior to 4:00 p.m. on April 23, 2006, the claimant called the employer and was able to speak with the supervisor. The supervisor terminated the claimant for failing to appear for training on April 22, 2006.

The testimony of the employer and claimant was inconsistent. The administrative law judge finds the claimant's testimony to be more credible because the employer did not provide the witness who had first-hand knowledge of the events.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. For the following reasons the administrative law judge concludes he was not.

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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's testimony. The employer has not carried its burden of proof to establish that the claimant committed any act of misconduct in connection with employment for which he was discharged. Misconduct has not been established. The claimant is allowed unemployment insurance benefits.

DECISION:

The representative's May 30, 2006 decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible

bas/cs