

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DERRICK F BOCKENSTEDT**  
Claimant

**APPEAL NO: 100-UI-02103-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**UNITED PARCEL SERVICE**  
Employer

**OC: 04/26/09  
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated September 24, 2009, reference 01, that held the claimant was not discharged for misconduct on August 27, 2009, and benefits are allowed. A telephone hearing was held on March 25, 2010. The claimant participated. Rodney Fiebelkorn, On Car Supervisor, and Laura McFadden, HR Representative, participated for the employer. Employer Exhibits One through Six was received as evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment as a part-time pre-loader on April 18, 2001, and last worked for the employer as a full-time package car driver on August 27, 2009. As an employee-driver, the claimant knew it was policy to report any accident.

The employer received a complaint on August 26 that one of its trucks struck a parked car in a lot while making a delivery. The employer determined that claimant had made a delivery to that location on August 21. When questioned, the claimant denied that his delivery truck struck a parked vehicle. After subsequent investigation by the employer that included local police, it was concluded that claimant's truck had caused some minor damage to a parked vehicle. The employer discharged the claimant on August 27 for failing to report the accident.

**REASONING AND CONCLUSIONS OF LAW:**

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.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on August 27, 2009.

The claimant did not report the accident on August 21, because he did not believe his delivery truck struck a parked vehicle. It was only after a considerable investigation involving local police was it concluded that claimant struck had caused the damage. There is no evidence the claimant committed any crime like being charged with leaving the scene of a property damage accident or failing to report it. This is an isolated instance of negligence with a lack of claimant intent by the claimant to violate the accident policy, as he was not aware his delivery truck had struck another parked vehicle until confronted with the investigation results.

**DECISION:**

The department decision dated September 24, 2009, reference 01, is affirmed. The claimant was not discharged for misconduct on August 27, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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