

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LARRY E FREDRICKSON**  
Claimant

**APPEAL NO: 06A-UI-08607-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RUAN TRANSPORT CORP**  
Employer

**OC: 03/05/06 R: 04  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Larry E. Fredrickson (claimant) appealed a representative's August 21, 2006 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Ruan Transport Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 12, 2006. The claimant participated in the hearing. Daniel Oney appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on January 31, 2005. As of June 1, 2005, he worked full time as a bulk commodity transport driver out of the employer's Buffalo, Iowa terminal. His last day of work was July 25, 2006. The employer suspended him on that date and discharged him by letter dated July 31, 2006. The stated reason for the discharge was unloading and disposing of product without reporting such incident or obtaining authorization.

The type of product typically hauled by the claimant was dry cement, lime, and fly ash. On July 24, 2006, he began work at 2:15 a.m. He was dispatched to pick up a load of lime kiln dust from a mining company to be delivered to a customer in Carthage, Illinois, a trip of approximately 120 miles. The mining company did not complete loading the claimant until about 4:17 a.m., and the load was scheduled to be delivered at 6:00 a.m.

The maximum weight for the truck under DOT regulations was 40 tons (80,000 pounds) including load. The truck empty weighed about 12.94 tons. Before leaving the mining company the claimant's truck was weighed at 41.64 tons. The amount of product that was loaded, therefore, was 28.7 tons. The claimant realized that he was overloaded before leaving, but

decided to take a chance, as he did not want to be delayed his departure any longer in order to have the mining company “blow off” some of what they had loaded. He therefore proceeded toward Carthage, Illinois.

Before the claimant was quite halfway to Carthage he heard on the truck radio that there were DOT weight inspections occurring on the road ahead of him. He therefore decided to exit the highway near Monmouth, Illinois and find a place where he could “blow off” some of the load so that he would not receive a costly ticket for being overweight. He drove the truck to the work site of one of his prior employers who had a pile of broken concrete and “blew off” some of the load. The diversion took him about 15 minutes. He did not clear either the diversion or the plan to blow off some of the product onto property operated by a third party with the employer.

The claimant arrived at the Carthage customer location at about 7:00 a.m. However, when the product was off-loaded, it was about 7,000 pounds short of the amount invoiced as having been loaded and sold to the customer. An inspector at the Carthage customer made the claimant aware of this discrepancy, but the claimant did not advise the employer of what had happened until July 25; by that time, however, the employer had already learned of the discrepancy from a broker representing the Carthage customer.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

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 focus of the definition of misconduct is on acts or omissions by a claimant that “rise to the level of being deliberate, intentional or culpable.” Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
  - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
  - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
  - a. Manifest equal culpability, wrongful intent or evil design; or
  - b. Show an intentional and substantial disregard of:
    1. The employer's interest, or
    2. The employee's duties and obligations to the employer.

Irrespective of whether the employer has a specific rule that might directly address a situation such as what occurred on July 24, 2006, the claimant's intentional leaving of the mining customer premises knowing that he was overweight and then diverting from his route to personally off-load product at a site of his own choosing without either notifying or obtaining the authorization of the employer, and as a result delivering a load less than what had been invoiced, shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

**DECISION:**

The representative's August 21, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of July 25, 2006. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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