

**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**

**JAMES D COBURN
1832 GREENWOOD DR
OTTUMWA IA 52501**

**THOMPSON DANNY R
D THOMPSON TRUCKING
2214 – 120TH ST
BATAVIA IA 52533**

**Appeal Number: 05A-UI-07605-JTT
OC: 06/26/05 R: 03
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:

James Coburn filed a timely appeal from the July 22, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was commenced on August 10, 2005 and concluded on August 24, 2005. Mr. Coburn participated in the hearing. Office Manager Melissa Rankin represented the employer during the proceedings on August 10, 2005, and presented additional testimony through Owner Danny Thompson and mechanic Brandt Smith. On August 24, 2005, the administrative law judge contacted the employer at the scheduled start of the reconvened hearing. At that time, Owner Danny Thompson represented the employer and indicated that the employer did not wish to further participate in the proceedings. The telephone conversation between the administrative law judge and Mr. Thompson was recorded and is part of the record.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: James Coburn was employed by Thompson Trucking as a full-time over-the-road truck driver from May 18, 2005 until June 24, 2005, when owner Danny Thompson discharged him for causing damage to a truck engine and trailer tires.

The incident that prompted the discharge occurred on or about June 14, 2005. On June 11, Mr. Coburn left Iowa in a company truck to deliver goods to Phoenix and Tucson, Arizona. Mr. Coburn made both deliveries on June 13. Mr. Thompson then advised Mr. Coburn that he needed to pick up a load in Hayden, Arizona. Mr. Thompson provided Mr. Coburn with the telephone number of another employee, who provided Mr. Coburn with instructions on how to locate the load once Mr. Coburn arrived in Hayden. Mr. Coburn picked up the load in Hayden and then planned his driving route for delivering the load in Amarillo, Texas. Mr. Coburn planned the shortest driving route to Amarillo.

Mr. Coburn had traveled three-fourths of the distance from Hayden to Amarillo when he began to have trouble with the truck. Mr. Coburn was traveling on an eight percent incline. Another truck driver was behind Mr. Coburn. Mr. Coburn had been in conversation with the driver. The other driver notified Mr. Coburn that Mr. Coburn's truck was losing a great deal of oil, which was spilling onto the highway. Mr. Coburn advised that the engine had suddenly started making a great deal of noise and that he needed to pull the truck off the road. The other driver advised Mr. Coburn of a nearby area where Mr. Coburn would be able to safely pull off the road and Mr. Coburn pulled the truck off the road when he reached the area. At that time, Mr. Coburn and the other driver observed that part of the engine had penetrated the exterior of the engine block and the truck was no longer operational. The other driver provided Mr. Coburn a ride to the next town, 47 miles away.

When Mr. Coburn arrived at the next town, he contacted Mr. Thompson and advised of the situation with the truck. The telephone conversation took place between 1:00 and 2:00 a.m. on June 14. Mr. Thompson advised Mr. Coburn that the employer would make appropriate arrangements the next day. Mr. Coburn was unable to return to the truck and lacked money for a motel room. Mr. Coburn contacted local police who assisted him in securing a motel room for the night. At approximately 7:00 a.m. the next morning, Mr. Coburn telephoned the employer as part of a required daily check in. Mr. Thompson advised Mr. Coburn that a tow truck was enroute to the damaged truck and would arrive in two hours. Mr. Coburn secured a ride to the truck and arrived there at 11:00 a.m. Mr. Coburn waited at the damaged truck until 3:30-4:00 p.m., when a State Trooper stopped and inquired about the truck and what had taken place. Mr. Coburn provided the State Trooper with the details, including the fact that he had contacted a "hazmat" agency regarding the spilled oil and the hazmat agency had already cleaned the spilled oil. Mr. Coburn provided the State Trooper with the telephone number for Mr. Thompson. Mr. Thompson advised the State Trooper that he had just contacted a towing company and a truck was enroute. The State Trooper provided Mr. Coburn with a ride to a Chevron service station.

When Mr. Coburn arrived at the Chevron station, he telephoned the towing company and learned that it would be another two hours before the tow truck would arrive. Mr. Coburn asked the tow company to pick him up at the Chevron station. Eventually the tow truck driver arrived with the damaged truck in tow and provided Mr. Coburn with a ride to Phoenix. Mr. Coburn contacted Mr. Thompson when he arrived in Phoenix and learned that another driver was enroute to pick up Mr. Coburn and deliver the load from Hayden to Amarillo.

At 2:00-2:30 p.m. on June 15, Driver Jim Tray arrived to collect Mr. Cobern and the load destined for Amarillo. The load for Amarillo was still on the trailer Mr. Coburn had used until the truck broke down. After delivering the load to Amarillo, Mr. Coburn had to ride with Mr. Tray to deliver a load in Illinois before traveling to Mount Vernon, Iowa and returning to Ottumwa. Mr. Coburn assisted with the driving during the trip. The two men arrived back in Ottumwa on June 21 or early June 22. When the truck arrived back in Ottumwa, Mr. Cobern performed a post-trip inspection of the vehicle and noted no damage to the trailer. Mr. Cobern then went home.

On June 22, Mr. Cobern contacted Office Manager Melissa Rankin and inquired whether she had heard anything about the damaged truck. Mr. Coburn also asked whether the employer had another truck available for him. Ms. Rankin advised Mr. Cobern that he would need to discuss the matter with Mr. Thompson. Mr. Thompson was not available at that time. The next day, Mr. Coburn attempted to contact Ms. Rankin or Mr. Thompson, but was unsuccessful in reaching either person.

On Friday, June 24, Mr. Coburn and his spouse went to the place of employment at approximately 3:30 p.m., to collect Mr. Coburn's paycheck. Mr. Thompson informed Mr. Coburn that Mr. Coburn had caused \$20,000.00 in damage to the truck engine by failing to check water levels as needed and by taking a hilly route that placed unnecessary stress on the truck's engine. Mr. Coburn had in fact checked the fluid levels, including water, on a regular basis. In addition, the problem with the truck's engine was such that the truck would have been virtually inoperable for more than a few minutes after the problem arose. Mr. Thompson also accused Mr. Coburn of ruining seven new tires on the trailer. However, the trailer had traveled a substantial distance since the truck breakdown on June 14 and Mr. Coburn had not been the last driver to pull the trailer. Mr. Thompson advised Mr. Coburn that he did not intend to pay Mr. Coburn because Mr. Coburn had caused \$20,000.00 damage to the truck engine. Mr. Coburn denied causing the damage to the engine and indicated he had pulled the truck off the road as soon as a problem arose. Mr. Thompson then indicated that he would pay Mr. Coburn minimum wage for his time for the trip to Arizona rather than a percentage of the revenue received for the load. Mr. Coburn advised Mr. Thompson that he thought he should look for another company that would be more honest in its dealings. Mr. Thompson responded that he had decided three days prior that he was going to discharge Mr. Coburn over the damage to the truck.

Mr. Thompson had purchased the truck engine from mechanic and shop owner Brandt Smith. Neither Mr. Thompson nor Mr. Smith knew the engine's history. Mr. Smith examined the engine once the truck was returned to Ottumwa and detected a hose under the sleeper section of the truck cab that was leaking water and antifreeze.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether the evidence in the record establishes that Mr. Coburn quit or was discharged. In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992).

The weight of the evidence in the record indicates that Mr. Coburn did mention an intention to seek other employment, but did not indicate an intention to immediately sever the employment

relationship. It was during this conversation that Mr. Thompson advised Mr. Coburn that he already decided to discharge Mr. Coburn. Mr. Coburn did not commit any overt act to evidence an intention to quit the employment. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Coburn was discharged and did not quit the employment.

The remaining question is whether the evidence in the record establishes that Mr. Coburn was discharged for misconduct in connection with his employment. It does 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).

Since the claimant was discharged, the employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

The evidence in the record establishes that Mr. Coburn was operating the employer's truck when the truck broke down. The evidence further establishes that the truck Mr. Coburn was assigned to drive had an engine with an unknown history. The evidence does not indicate that Mr. Coburn in any way abused or neglected the employer's truck. Based on the evidence in the record, the administrative law judge concludes that Mr. Coburn was discharged for no disqualifying reason. Accordingly, Mr. Coburn is eligible for benefits, provided he is otherwise eligible.

DECISION:

The Agency representative's decision dated July 22, 2005, reference 01, is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible.

jt/s