

**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**

**DAVID M LEYH
25967 HWY 52
GARNAVILLO IA 52049**

**GRAY TRANSPORTATION INC
PO BOX 2365
WATERLOO IA 50704**

**Appeal Number: 04A-UI-04249-CT
OC: 01/04/04 R: 04
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, 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
Section 96.6(2) – Timeliness of Appeals

STATEMENT OF THE CASE:

David Leyh filed an appeal from a representative's decision dated March 24, 2004, reference 03, which denied benefits based on his separation from Gray Transportation, Inc. After due notice was issued, a hearing was held by telephone on May 6, 2004. Mr. Leyh participated personally. The employer participated by Darrin Gray, Safety and Compliance.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: The representative's decision which is the subject of this appeal was mailed to Mr. Leyh at his address of record on March 24, 2004. He did not receive the decision. He did not learn of the disqualification until he went to his local office on April 14, 2004. He filed his appeal the same day.

Mr. Leyh was employed by Gray Transportation, Inc. from February 11 through February 26, 2004 as an over-the-road driver. He was brought to the office on February 26 to discuss problems the employer had been having with his performance. The employer did not intend to discharge or discipline him for the problems, only to bring them to his attention so he could correct them. After the problems were discussed, the employer asked to see his driver's log book. Mr. Leyh went to his vehicle but his log book was not there. Logs are to be submitted weekly but he had not submitted any logs during the course of his employment.

Mr. Leyh believed another employee had removed his log book from the vehicle. He came into the shop area and began accusing others of having removed it. He was loud, belligerent and using profanity. His conduct was in violation of the employer's policy which prohibits using profanity in the presence of customers or other employees. Because of his failure to have his log book and his behavior in the shop, the decision was made to discharge Mr. Leyh on February 26, 2004.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this matter is whether Mr. Leyh filed a timely appeal as required by Iowa Code Section 96.6(2). He did not receive the disqualifying decision and, therefore, could not have filed an appeal by the April 3, 2004 due date. Therefore, the appeal filed on April 14, 2004 shall be considered timely filed.

The next issue in this matter is whether Mr. Leyh was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Leyh was discharged for not having his log book and for creating a scene in the shop area. The failure to have the log book was not misconduct as someone else may very well have removed the log book from Mr. Leyh's vehicle.

However, Mr. Leyh's response to the suspected behavior of others was inappropriate in the workplace. If he believed someone had taken his log book, he should have allowed the employer to investigate the matter. His conduct in accosting others in a loud voice using profanity was clearly contrary to the type of behavior the employer had the right to expect. The administrative law judge concludes that his conduct in the shop was sufficient to establish disqualifying misconduct. Accordingly, benefits are denied.

DECISION:

The representative's decision dated March 24, 2004, reference 03, is hereby affirmed. Mr. Leyh was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/kjf