

**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**

**JAMIE A KUEHL
4110 COLFAX AVE
DES MOINES IA 50317**

**TRIPLE J TRANSFER INC
1222 – 110TH ST
CHURDAN IA 50050**

**Appeal Number: 05A-UI-07488-DWT
OC: 06/19/05 R: 02
Claimant: Respondent (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
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Triple J. Transfer, Inc. (employer) appealed a representative's July 13, 2005 decision (reference 01) that concluded Jamie A. Kuehl (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 8, 2005. The claimant participated in the hearing. Al Kuehl was available to testify for the claimant. Chris Juergensen, the owner, 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.

ISSUES:

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer in late September 2003. The claimant worked as a full-time truck delivery driver. Juergensen was the claimant's supervisor.

During his employment, the employer talked to the claimant several times about preparing bill of lading properly. The employer required employees to highlight hazardous material on the bill of lading and to place the bill of lading for hazardous material on top of paperwork. The claimant did not follow this procedure all the time. Throughout his employment, the claimant had problems completing written post-trip inspections. The claimant would complete the paperwork on the post trip inspections for a while, but would not do this consistently.

On June 9, 2005, the employer had another employee give the claimant a written warning for the above problems. The claimant did not sign the written warning because he wanted to talk to Juergensen before he signed the written warning. The written warning indicated the claimant had to complete all aspects of his job, and this was his final warning.

The week of June 12, the claimant worked. Juergensen received the claimant's paperwork for this week on Friday or Saturday. The employer noticed the claimant did not follow the bill of lading procedure for hazardous materials and again did not complete paperwork for post-trip inspections. Since the claimant had just received a written warning for these problems, the employer decided to discharge the claimant. The employer discharged the claimant on June 20 or 21.

After the employer discharged the claimant, the employer discontinued the route the claimant had worked. The employer did not hire anyone to replace the claimant.

The claimant established a claim for unemployment insurance benefits during the week of June 19, 2005. The claimant filed claims for the weeks ending July 23 and 30. He received a total of \$644.00 in benefits for these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

On June 9, the claimant received a written warning for not following the employer's procedures in connection with bill of lading for hazardous material he delivered and for failing to make written reports on post-trip inspections. The next week, the week of June 12, the claimant again did not follow the employer's directions regarding hazardous waste bills of lading and post-trip inspection written reports. While it is somewhat suspicious that the employer discontinued the claimant's route and did not hire anyone else for that route, the claimant knew or should have known the employer required him to follow certain procedures and the claimant did not. Even though the claimant received a written warning on June 9, he did nothing or took no extra precautions to make sure he followed the employer's instructions. The claimant's failure to follow the employer's instructions just after the employer gave him a written warning for this problem shows an intentional and substantial disregard of the employer's interests. The employer discharged the claimant for work-connected misconduct. As of June 19, 2005, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not qualified to receive unemployment insurance benefits for the weeks ending July 23 and 30, 2005. The claimant has been overpaid a total of \$644.00 in benefits.

DECISION:

The representative's July 13, 2005 decision (reference 01) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of June 19, 2005. This disqualification continues until he 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. The claimant is not legally entitled to receive benefits for the weeks ending June 23 and 30, 2005. The claimant has been overpaid and must repay \$644.00 in benefits he received for these weeks.

dlw/pjs