

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

ROBERT W TETREV  
1622 HWY 4  
YALE IA 50277

OKOBOJI ENTERPRISES INC  
c/o JOHNSON AND ASSOCIATES  
PO BOX 6007  
OMAHA NE 68106-0007

Appeal Number: 04A-UI-12106-HT  
OC: 10/10/04 R: 01  
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, 4<sup>th</sup> 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

STATEMENT OF THE CASE:

The employer, Okoboji Enterprises, Inc. (Okoboji), filed an appeal from a decision dated November 1, 2004, reference 01. The decision allowed benefits to the claimant, Robert Tetrev. After due notice was issued a hearing was held by telephone conference call on December 6, 2004. The claimant participated on his own behalf. The employer participated by President Leroy Gessman, Dispatcher Vicki Godwin and was represented by Johnson and Associates in the person of Peg Heenan. Exhibit One was admitted into the record.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Robert Tetrev was employed by Okoboji from July 1, 2003 until October 12, 2004. He was a full-time driver, transporting horses.

On August 26, 2004, President Leroy Gessman and Dispatcher Vicki Godwin met with the claimant to discuss some complaints which had been received. Of special concern was a delivery made by Mr. Tetrev which was had been four hours late. He had misrepresented the reason for the delay. The employer notified the claimant that any further problems would lead to discharge.

On October 12, 2004, the employer received a letter of complaint from a customer who expressed concerns about Mr. Tetrev. According to the letter he had mishandled the truck and trailer with which he was delivering a horse. The trailer ran over and destroyed a portion of lawn, and he stopped so abruptly that the trailer rocked, causing the horses to have to "scramble" to keep their balance. This was of especial concern because one of the horses had just undergone surgery on his leg.

After receiving the letter Ms. Godwin contacted the customer and confirmed all of the incidents related in the document. A review of the claimant's record was made and he was notified by telephone by Mr. Gessman he was discharged.

Robert Tetrev filed a claim for unemployment benefits with an effective date of October 10, 2004. The records of Iowa Workforce Development indicate no benefits have been paid as of the date of the hearing.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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).

The claimant had been advised his job was in jeopardy as a result of his work performance and customer complaints. In spite of the warning, he operated the employer's vehicle in a reckless manner, causing damage to a customer's property and endangering the health of the horse he was transporting. The employer is entrusted with the safe transportation of the livestock belonging to its customers and the claimant's conduct interfered with its ability to provide good service and ensure the safety and well being of the livestock. This is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of November 1, 2004, reference 01, is reversed. Robert Tetrev is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible.

bgh/kjf