

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOANLD W MATHIS
Claimant

APPEAL NO. 06A-UI-10327-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROYAL FLUSH SHUTTLE SERVICE INC
Employer

**OC: 09/24/06 R: 04
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Royal Flush Shuttle Service, Inc. filed an appeal from a representative's decision dated October 18, 2006, reference 01, which held that no disqualification would be imposed regarding Donald Mathis' separation from employment. After due notice was issued, a hearing was held by telephone on November 7, 2006. Mr. Mathis participated personally. The employer participated by Roxann Kragness, General Manager.

ISSUE:

At issue in this matter is whether Mr. Mathis was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Mathis was employed by Royal Flush Shuttle Service, Inc. from January 2 until May 13, 2006 as a part-time shuttle driver. His hours varied and he worked 24 or more hours each week. He was discharged from the employment.

On February 12, Mr. Mathis stopped to pick up a passenger but did not have the bus close to the curb. While he was stopped, a vehicle pulled in between the rear passenger side of the bus and the curb. Mr. Mathis did not see the vehicle and scraped it as he was pulling away. There was approximately \$2,800.00 in damage to the other vehicle. On May 6, Mr. Mathis had to back down a street after picking up a passenger because of construction in the area. In doing so, he struck a vehicle parked in a "no parking" zone. There was approximately \$2,100.00 in damages to the other vehicle. The police were not called on either of the two occasions. Mr. Mathis was not disciplined as a result of either incident.

The decision to discharge Mr. Mathis was based on a passenger complaint on May 13. He drove a group to Tama during a rainstorm. Once there, a passenger called the employer to report that the group did not want Mr. Mathis to drive on the return trip. The passenger reported that Mr. Mathis was "all over the road" and that he had driven on the shoulder. The passenger indicated she was scared to ride with him. Mr. Mathis indicated that what the passenger cited

as erratic driving was due to the vehicle hydroplaning because of the rain. As a result of the passenger's complaint, the employer sent another bus and driver to drive the group back.

REASONING AND CONCLUSIONS OF LAW:

Mr. Mathis was discharged from employment. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Mathis was involved in two minor accidents while driving the employer's bus. The employer failed to establish that either incident was avoidable. Moreover, the employer did not discipline Mr. Mathis as result of either incident. It appears that he would have been retained in the employment in spite of the accidents had it not been for the passenger complaint of May 13.

The evidence of record failed to establish to the satisfaction of the administrative law judge that Mr. Mathis was driving erratically for reasons unrelated to the weather conditions on May 13. The administrative law judge does not doubt that some passengers may have been frightened by the experience. However, the evidence falls short of establishing that the fear was due to misconduct on Mr. Mathis' part. As such, there was no current act of misconduct to support a disqualification from benefits. See 871 IAC 24.32(8). While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons stated herein, it is concluded that misconduct has not been established and benefits are allowed.

DECISION:

The representative's decision dated October 18, 2006, reference 01, is hereby affirmed. Mr. Mathis was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs