

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BILL E WILLIAMS

Claimant

APPEAL NO. 10A-UI-17750-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE FOOD STORES

Employer

OC: 11/28/10

Claimant: Appellant (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Bill Williams, filed an appeal from a decision dated December 21, 2010, reference 02. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on February 7, 2011. The claimant participated on his own behalf. The employer, Hy-Vee, did not provide a telephone number where a witness could be contacted and did not participate.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Bill Williams was employed by Hy-Vee from October 2006 until October 28, 2010 as a full-time order selector. Part of his job duties required him to use a fork truck. The policy is for the operator to “sign in” on a computer aboard the fork truck so the employer may track who was using which equipment at what time. Employees are supposed to “sign out” on the same computer when they are not using the fork truck. If an employee signs in to another fork truck during the shift, the computer will automatically sign them out on the previous fork truck.

The night of October 26, 2010, Mr. Williams used a fork truck but thought it was not working correctly, so signed in to another fork truck about seven minutes after parking the first piece of equipment. The fork truck was damaged at some point during that shift and the employer believed it was Mr. Williams who had caused the damage. He was discharged by the vice president, Todd, on October 28, 2010, because the damage was not reported. The claimant maintains he did not damage the truck but does not know who did.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The employer did not participate in the hearing to provide any evidence or testimony to support its contention Mr. Williams was the employee who damaged the fork truck and did not report it. The administrative law judge concludes the employer did not meet its burden of proof to establish substantial, job-related misconduct and disqualification may not be imposed.

DECISION:

The representative's decision of December 21, 2010, reference 02, is reversed. Bill Williams is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs