IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

JAREC C BETZ Claimant **LOMAR DISTRIBUTING INC** Employer	**APPEAL 15A-UI-13568-JP-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 11/15/15** **Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 7, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 31, 2015. Claimant participated. Employer participated through human resource coordinator, Caleb Cork. Employer Exhibit One was admitted into evidence with no objection.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a warehouse generalist from August 11, 2014, and was separated from employment on November 15, 2015, when he was discharged.

Claimant was discharged for committing too many safety violations. The final incident occurred on November 16, 2015, when claimant was loading trucks. Claimant went to the cooler to get product using a pallet jack. Claimant was operating the pallet jack in reverse; therefore the load was in front of him. This is not the proper way to operate the pallet jack unless you are dropping the pallet off, because it is not easy to see with the load up front. Claimant had been trained how to properly use the pallet jack. Claimant went to go through the cooler door, but the sensor did not go off. Claimant pushed the door with the load and moved the door eighteen inches causing damage. The employer had to replace the door because of the damage. It was estimated that the damage was going to be around $5,000.00. It was apparent that the door was damaged, because the door did not shut properly. After claimant struck the door, he left. Claimant never reported the incident to his supervisor, another employee reported it. The supervisor asked all the employees what happened, but no employee admitted to do anything. The employer then reviewed the camera video. Claimant denied doing anything when he was contacted twice about the damage. Claimant was then discharged.

There were two prior safety violation warnings. On September 27, 2015, claimant had a pallet locked on to his order selector. Claimant could not get it off of his order selector. Instead of asking for help, claimant tried to break it off, and when that did not work, claimant then broke the pallet, damaging the racking bars. Claimant did not report the incident to the employer. The employer discovered it was claimant that damaged the racking after reviewing camera video. Mr. Cork met with claimant about this incident. Claimant was suspended for three days. Mr. Cork explained if there is another incident, then it may result in termination. Mr. Cork explained if there were any equipment problems, claimant was supposed to talk to a supervisor and ask for help. On June 24, 2015, claimant fell off of a machine. Claimant claimed his safety harness failed and that is how he fell. The employer investigated the incident and determined that claimant was driving the machine without tying down when he went past the height required. Claimant was not properly using the safety harness. The employer told claimant to follow the safety rules and claimant was retrained on the safety harness. Claimant received a verbal warning.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

It is the duty of an administrative law judge and the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge, as the finder of fact, may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.,* 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. Claimant had two prior warnings for safety violations (June 24, 2015 and September 27, 2015). Claimant only received a verbal warning for the June incident, but was suspended for three days for the September incident. Claimant knew his job was in jeopardy after these warnings if another incident occurred. On November 16, 2015, claimant was observed on video causing damage to the cooler door by not operating the pallet jack correctly. The employer had trained claimant how to operate the pallet jack properly. Claimant's argument that he did not damage the cooler door is not persuasive. After claimant and the other employees denied damaging the cooler door, the employer reviewed the video from the camera that monitored the cooler door. Mr. Cork observed on the video claimant operating the pallet jack incorrectly and striking the door with the pallet jack. When claimant struck the door, it caused approximately $5,000.00 in damage and the door would not shut properly.

The employer has presented substantial and credible evidence that claimant committed another safety violation and damaged the cooler door after having been warned on two prior occasions for safety violations. This is disqualifying misconduct.

DECISION:

The December 7, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld

until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Jeremy Peterson
Administrative Law Judge

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Decision Dated and Mailed

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