

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

RANDALL J ROLFS
Claimant

APPEAL NO. 18A-UI-07647-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LOWE'S HOME CENTERS LLC
Employer

OC: 06/24/18
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Lowe's Home Centers (employer) appealed a representative's July 11, 2018, decision (reference 01) that concluded Randall Rolfs (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 3, 2018. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Thomas Ramold, Store Manager.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on December 3, 2015, as a full-time commercial loader. He signed for receipt of the employer's handbook and safety rules on December 3, 2015. The handbook states that employees should use spotters as indicated in training. Failure to follow this rule and other safety rules could result in immediate termination. The employer was unaware of the dates the claimant had safety training. The employer issued the claimant a written warning for improper language.

On June 12, 2018, the claimant was operating a forklift, moving it from the back of the store to the front canopy. A supervisor told the claimant he should have a spotter when driving the forklift from the back to the front of the store when it is open. Later that day, the claimant again drove the forklift from the back of the store to the front canopy without a spotter. The employer terminated the claimant on June 19, 2018, for violating a verbal policy that employees should have a spotter when driving the forklift from the back to the front to the front of the store when it is open.

The claimant filed for unemployment insurance benefits with an effective date of June 24, 2018. The employer did not have any information about participation in the fact finding interview on July 10, 2018.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation. In this case, the employer did not have a written policy about driving the forklift without a spotter. The employer could not provide a date of training when the verbal policy was given to the claimant.

The employer had talked to the claimant about the issue leading to the separation, but it is uncertain what was said in the conversation. Neither person who witnessed the conversation testified at the appeal hearing. The employer has not met the burden of proof to establish the claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The employer did not provide sufficient evidence of job-related misconduct. It did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's July 11, 2018, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs