

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTHONY L COOPER
Claimant

APPEAL NO. 14A-UI-05875-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

RYDER INTEGRATED LOGISTICS INC
Employer

OC: 05/04/14
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Ryder Integrated Logistics (employer) appealed a representative's May 28, 2014, decision (reference 01) that concluded Anthony Cooper (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 1, 2014. The claimant participated personally. The employer participated by Jordan Van Ervelde, Customer Logistics Coordinator, and Steven Daniels, Customer Logistics Manager. The employer offered and Exhibit One was received into evidence.

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 June 18, 2013, as a full-time material handler. He worked ten to twelve hour days, six to seven days per week. The claimant signed for receipt of the employer's handbooks on June 19, 2013, but did not receive copies. The claimant was given a document with a location in the warehouse, a number and a quantity. He was supposed to find the item, verify the item number, and the amount of items for a shipment to a customer. His selections were taken to the dock where the order was reviewed by three other employees. Employees were under pressure to work quickly. Item numbers often fell off parts making identification difficult.

The employer issued the claimant written warnings on January 6 and February 28, 2014, for selecting the wrong item for delivery to a customer. The employer notified the claimant that further infractions could result in termination from employment. At the time the warnings were issued the employer showed the claimant pictures of the parts and the tags with the claimant's initials written on the tag.

On April 14, 2014, the employer learned that an order the claimant picked on April 2, 2014, was incorrect. Twenty three days later on May 7, 2014, the employer terminated the claimant for incorrectly picking a part. The employer did not show the claimant a picture of the part or the tag. The claimant did not see any information that the part selected incorrectly was a part selected by him.

The claimant filed for unemployment insurance benefits with an effective date of May 4, 2014. The employer participated personally at the fact-finding interview on May 27, 2014, by Jordan Van Ervelde.

REASONING AND CONCLUSIONS OF LAW:

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

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).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident provided by the employer occurred on April 2, 2014, and discovered on April 14, 2014. The claimant was not discharged until May 7, 2014. The employer has failed to provide any evidence of willful and deliberate misconduct which was the final incident leading to the discharge and disqualification may not be imposed.

DECISION:

The representative's May 28, 2014, decision (reference 01) is affirmed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs