

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CECIL B DAVIS
Claimant

APPEAL NO. 08A-UI-11004-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRIORITY COURIER INC
Employer

**OC: 10/19/08 R: 02
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Cecil Davis (claimant) appealed a representative's November 14, 2008 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Priority Courier (employer) for carelessness in performing his work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 9, 2008. The claimant participated personally and through Joe Quillen, a former co-worker. The employer participated by Jon Jero, Des Moines Terminal Manager.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

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 May 5, 2004, as a full-time warehouse worker and forklift driver. The employer did not issue the claimant any warnings during his employment. Drivers backed into the loading docks. The claimant and others loaded the trucks with forklifts. When loading was complete a chain was hung at the dock to indicate no other loading should take place. The shift supervisor notified the driver that he could move the truck. Sometimes a forklift driver would have to put more on the truck. The employer's policy was to have the driver notify the shift supervisor and/or the driver before removing the chain.

On October 17, 2008, the claimant saw that a truck was loaded incorrectly and could cause damage to the rest of the load. He did not see the driver or the shift supervisor. He removed the chain and proceeded to enter the truck with his forklift. At that time the truck pulled away and the forklift and claimant fell to the pavement. The claimant was uninjured. The forklift suffered approximately \$2,000.00 damage. The employer terminated the claimant on October 20, 2008.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

Iowa Code section 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 in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions by loading trucks after chains had been hung without notifying the shift supervisor or driver. On October 17, 2008, a serious accident occurred which could have resulted in severe injury to the claimant. The single incident is serious and substantial enough to warrant discharge and denial of benefits. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's November 14, 2008 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css