

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL STARK**  
Claimant

**APPEAL NO: 10A-UI-02609-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OMEGA CABINETS LTD**  
Employer

**OC: 12-20-09**  
**Claimant: Appellant (2)**

Section 96.5-2-a - Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the February 12, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 15, 2010. The claimant participated in the hearing. Jodi Schaeffer, Human Resources Representative and Chase Thornburgh, Human Resources Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time material handler for Omega Cabinets from December 9, 2002 to January 22, 2010. He was discharged for a third incident of damaging company property when he was on a final written warning for the same. A written warning was issued to him April 29, 2009, for hitting two ten-foot sheets of plywood with the fork truck. A final written warning was issued to the claimant July 10, 2009, for another accident. On July 6, 2009, he picked up a unit of lumber with the fork lift and proceeded out of the bay but the band on top of the unit hit the heat shield, which then fell on top of the materials. The claimant did not dispute either incident and knew that if he received a third corrective action notice within 12 months, his employment would be terminated. Employees reported to work on January 18, 2010, and found damage to the top of a trailer caused by a forklift. No one had reported the damage so the employer conducted an investigation and determined the claimant was the only one who could have damaged it since he was the only person working on the trailer on Friday afternoon, January 15, 2010. There was no third shift that night and no weekend shift. The claimant understood why it looked like he had been the one to damage the trailer but denied doing so. He did not believe he could have caused the damage without knowing it. The claimant had immediately admitted the prior damage he caused but the employer believed the claimant would be dishonest about it because it was his third violation within the year and would result in his termination.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for a third incident of damaging company property within a year. He denied doing so and the employer only concluded the claimant did it because he was working on the trailer on the previous Friday and it knew of no one else working on the trailer. The preponderance of the evidence does not confirm the claimant damaged the trailer even though it might be likely. The employer has not met its burden of proving disqualifying job misconduct as defined by Iowa law. Therefore, benefits are allowed.

**DECISION:**

The February 12, 2010, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs