

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROBERT L WILSON**  
Claimant

**APPEAL NO. 11A-UI-05302-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**C & S PRODUCTS CO INC**  
Employer

**OC: 03/20/11  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated April 18, 2011, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 16, 2011. Claimant participated. Employer participated by Kelly Thiele, human resources coordinator. The record consists of the testimony of Kelly Thiele; the testimony of Robert Wilson; and Employer's Exhibits 1-3.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer manufactures wildlife bird specialty products. The employer has two facilities in Fort Dodge, Iowa. The claimant worked at the south facility. The claimant's date of hire was August 3, 1998. The claimant was initially hired as a production worker. At the time of his termination he was a truck driver. The claimant's last day of work was March 22, 2011. He was terminated on March 22, 2011.

The incident that led to the claimant's termination occurred on March 22, 2011. The claimant was operating a fork lift when he struck another employee. The claimant was moving a pallet of double stacked liquid trays. The pallet and its contents obstructed his vision. The fork truck should have only moved backwards, given the obstruction of vision. The claimant was in an area of the plant where he needed to turn around but could only do so by going forward.

The claimant knew that a group of employees had gathered because a line had gone down. He did not realize that another employee was backing up as she was giving instructions to the group. This was the employee he struck with the fork truck. The employee was knocked to the ground by the claimant's fork truck. She was not seriously injured. The claimant believes that

he was going approximately one or one and one half miles per hour at the time he and the other employee collided.

The employer deemed the claimant to have committed a serious safety violation. Training on the proper operation of fork trucks is given annually.

### **REASONING AND CONCLUSIONS OF LAW:**

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.

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The legal definition excludes acts of negligence or mistakes in judgment or discretion in isolated situations. The employer has the burden of proof to establish misconduct.

The evidence established that the claimant was involved in an accident at work on March 22, 2011. The claimant was operating a fork truck. The fork truck was moving a pallet that was stacked high enough that the claimant's vision was obstructed. If a fork truck operator has an obstructed view, he is supposed to travel only backwards with the fork truck. The claimant did know that this was the proper procedure. However, he credibly explained that he was in a tight area and that in order to get out of the space he was in so that he could drive backwards, he had to move the truck forwards. He did not realize that another employee was backing up while

she was talking. As a result, the other employee and the fork truck collided. The claimant was only traveling at one or one and one half miles per hour, which the claimant explained was walking speed.

The administrative law judge concludes that the incident in question does not represent a deliberate or wanton act of carelessness but rather an act of negligence on the part of the claimant in an isolated instance. The claimant may have received a warning about fork truck operation back in 2008, but there is no evidence that the claimant persistently operated equipment in an unsafe manner or had had any previous accidents. Although the employer may have viewed the claimant's conduct as a serious safety violation, which justified termination, the greater weight of the evidence is that the claimant made an error of judgment. This is not misconduct that disqualifies him from receiving unemployment insurance benefits. Benefits are therefore allowed, if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated April 18, 2011, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

---

Vicki L. Seeck  
Administrative Law Judge

---

Decision Dated and Mailed

vls/pjs