

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JEROME HOSKINS**  
Claimant

**FLEXSTEEL INDUSTRIES INC**  
Employer

**APPEAL 15A-UI-10717-CL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/30/15**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the September 22, 2015, (reference 01) unemployment insurance decision that denied benefits based upon misconduct. The parties were properly notified about the hearing. A telephone hearing was held on October 21, 2015. Claimant participated. Employer participated through supervisor of the metal division, Paul Menster and human resource/payroll supervisor, Donna Backes. Employer's Exhibits 1 through 7 were received.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a common laborer from October 21, 2014, and was separated from employment on September 2, 2015, when he was terminated.

At the beginning of his employment, claimant was trained regarding employer's safety rules. Employer has a rule requiring employees to report any accident, injury, and/or near miss immediately to the supervisor and/or human resources, regardless of severity.

On August 25, 2015, claimant was moving an 8600 pound load with a forklift. The forklift he was driving was only capable of lifting 7000 pounds. The forklift claimant was driving tipped forward and the load was dropped. Claimant informed a co-worker of the incident, but he never informed management. The co-worker reported the incident to supervisor Paul Menster about two and a half hours after it occurred. Claimant never reported the incident to management or human resources. A few days before August 25, 2015, claimant observed pallets fall over and damage coil, but he did not report that incident to management either.

On September 2, 2015, Menster and other management level employees interviewed claimant about the two incidents and claimant's failure to report them to management. Claimant did not

assert that he reported either incident to management. Employer terminated claimant's employment for violating a known work rule.

Claimant had not been previously warned about similar conduct.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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).

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 Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to

substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

Here, claimant was terminated for failing to report to accidents to management even though he was aware of the safety rule that required him to do so. This violates employer's known safety rule. Claimant's actions in failing to make sure his manager was aware that he dropped a load that weighed over 8000 pounds also violates the standards of behavior that any employer has a right to expect from its employees. Even without a specific safety rule, it is common sense that an employee would be required to personally report such an incident to his manager.

Employer has established claimant was terminated for misconduct.

**DECISION:**

The September 22, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Decision Dated and Mailed

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