

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICK E FARRINGTON
Claimant

APPEAL NO. 07A-UI-09222-S2

**ADMINISTRATIVE LAW JUDGE
DECISION**

CFA INC
Employer

**OC: 10/22/06 R: 03
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Rick Farrington (claimant) appealed a representative's September 19, 2007 decision (reference 03) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with CFA (employer) for insubordination in connection with his work. After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held in Cedar Rapids, Iowa, on October 25, 2007. The claimant did not appear for the hearing. He requested by letter that he appear by reading his appeal letter and his request was granted. The employer participated by Karla Alvarez, Branch Manager, and Jonatan Artola, Production Floor Supervisor. Exhibit D-1 was received into evidence. The employer offered and Exhibit One was received into evidence.

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 February 19, 2004, as a full-time forklift driver. The claimant signed for receipt of the employer's handbook on February 19, 2004. On November 7, 2006, the employer issued the claimant a written warning for lifting a pallet improperly. On June 26, 2007, the employer issued the claimant a written warning for vandalism of company property. The claimant signed both warnings. The warnings indicated that further infractions could result in the claimant's termination from employment. The claimant was verbally warned when he urinated against the side of the employer's building rather than using the restroom facilities.

On August 21, 2007, the claimant was supposed to be wearing work gloves that reached over his hands and extended approximately five inches above his wrists. The production floor supervisor saw the claimant place the gloves in his hands but not with his hands in the gloves. The claimant proceeded to lift a pallet in this way. The supervisor told the claimant to put his gloves on correctly. The claimant said "yeah, yeah" and shook his head as if to say "whatever". He slid his hands in the gloves but did not pull them up. They only extended to his wrists. Later

another line coordinator saw the claimant with just his hands in the gloves lifting pallets. He reported it to the supervisor. The supervisor completed a warning sheet and tried to give it to the claimant. The claimant said "I'm not signing that fucking thing". The employer sent the claimant home. On August 22, 2007, the employer terminated the claimant for insubordination and failure to follow instructions.

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). An employer has a right to expect employees to follow instructions in the performance of his job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions and then having a disrespectful attitude toward the employer. The claimant's disregard of the employer's interests is misconduct. As such he is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's September 19, 2007 decision (reference 03) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount provided he is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs