

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**LUIS F PEREZ**  
Claimant

**EXEL INC**  
Employer

**APPEAL 15A-UI-11036-H2T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/13/15**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the September 30, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 16, 2015. Claimant participated with the assistance of Spanish interpreter Maritza #8781 from the CTS Language Link Service. Employer participated through (representative) Jennifer Guzman, Human Resources Representative and Brian Smith, General Manager.

**ISSUE:**

Was the claimant discharged due to job connected 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 warehouse associate beginning on October 22, 2008 through September 14, 2015 when he was discharged.

The claimant had been given a copy of the employer's rules and policies and knew that if he endangered others either by recklessness or horseplay he could lose his job. On September 10 the claimant came upon a coworker, Arturo who was driving a high lift fork truck. Arturo's forklift wheel was stuck on piece of wood on the floor. Also at the time Arturo's forklift load was 43 feet in the air with a pallet on it. The claimant used his forklift to lift Arturo's forklift to try and get it unstuck. Arturo's forklift began to tip and the only reason it did not tip over was the load caught on part of the pallet. The claimant endangered his and Arturo's safety as well as others working in the area. Because the violation was such a safety violation, both the claimant and Arturo were discharged.

**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).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant should have called for a supervisor to assist his coworker. By lifting Arturo's forklift he endangered his own safety and that of his coworkers. Under the circumstances the claimant's violation of the known safety rule is sufficient job connected misconduct to deny him unemployment insurance benefits. Benefits are denied.

**DECISION:**

The September 30, 2015, (reference 01) 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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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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