

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES E PADILLA
Claimant

APPEAL NO. 07A-UI-01471-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LADDAWN INC
Employer

OC: 12/31/06 R: 04
Claimant: Appellant (2)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

James Padilla filed an appeal from a representative's decision dated February 5, 2007, reference 01, which denied benefits based on his separation from Laddawn, Inc. After due notice was issued, a hearing was held by telephone on February 27, 2007. Mr. Padilla participated personally. The employer participated by Wayne Heltemes, Warehouse Manager.

ISSUE:

At issue in this matter is whether Mr. Padilla was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Padilla was employed by Laddawn, Inc. from June 13, 2005 until January 3, 2007. He was last employed full-time as a shipping and receiving clerk. He was discharged after he had an accident with a forklift on January 3.

Mr. Padilla was driving a forklift carrying a pallet of plastic rolls weighing approximately 1,000 pounds. As he was proceeding down a main aisle, he noted a reach truck coming in his direction. He checked to make sure he was over to one side as much as he could go and proceeded on. He did not slow down but the driver of the reach truck did. As he was passing the reach truck, the pallet Mr. Padilla was carrying scraped along the side of the reach truck, leaving a scrape approximately two feet long. He did not hear the scraping because he was wearing ear plugs. He did not know he was responsible for the damage until coworkers told him so later. The reach truck he damaged was new and just being operated for the first time when the damage occurred. Solely as a result of the above incident, Mr. Padilla was discharged on January 3, 2007.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had

the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Padilla was discharged because of the damage he caused to the employer's new reach truck on January 3, 2007. The administrative law judge does not believe he intentionally caused the damage. He did not violate any known work rules by failing to slow down when he noted the reach truck approaching. He was not operating the forklift recklessly or carelessly. He simply misjudged the amount of space between the forklift and the reach truck. At most, Mr. Padilla was negligent on January 3.

Negligence constitutes disqualifying misconduct only if it is so recurrent as to manifest a substantial disregard of the employer's standards and interests. See 871 IAC 24.32(1). Mr. Padilla's one incident of negligence is not sufficient to establish substantial misconduct. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated February 5, 2007, reference 01, is hereby reversed. Mr. Padilla was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css