

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SANTIAGO P CHAVEZ

Claimant

APPEAL NO. 13A-UI-03841-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LOFFREDO FRESH PRODUCE COMPANY

LOFFREDO GARDENS INC

Employer

OC: 03/03/13

Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Santiago Chavez (claimant) appealed a representative's March 29, 2013 decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Loffredo Fresh Produce Company (employer) for failure to follow instructions in the performance of his work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 30, 2013. The claimant participated personally. The employer participated by Michael Vilez, Human Resources Manager, and Tim Boston, Operations Manager. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 May 25, 2007, as a full-time driver. The claimant signed for receipt of the employer's handbook on May 25, 2007, and June 4, 2010. The employer prepared a written warning on August 29, 2012, for failure to follow instructions. The claimant never saw the warning during his employment. On January 31, 2013, the claimant followed all precautions but a trailer was dropped from his tractor in the employer's parking lot. On February 1, 2013, the employer prepared a written warning for failure to properly connect a trailer to a truck but did not issue the warning to the claimant. The employer never talked to the claimant about the incident.

On February 21, 2013, the claimant connected the tractor to the trailer and followed the proper procedures for connection. He got out of the tractor and checked to make certain it was connected properly. He reentered the tractor and pulled ahead for approximately ten feet to see if it was properly connected. The trailer was connected and the claimant pulled ahead. As he

turned his wheel, the trailer dropped. On February 22, 2013, the employer terminated the claimant. Other employees had dropped trailers and were not terminated. The Operations Manager told the claimant that the same thing happened to him.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not 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 may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as employer had not previously warned claimant about any of the issues leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

The claimant's and the employer's testimony is inconsistent. The administrative law judge finds the claimant's testimony to be more credible because he was an eye witnesses to the events for which he was terminated.

DECISION:

The representative's March 29, 2013 decision (reference 02) is reversed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs