

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DARNELL SMITH**  
Claimant

**APPEAL NO. 11A-UI-04245-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FERGUSON ENTERPRISES INC**  
Employer

**OC: 02/27/11  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Ferguson Enterprises, Inc. filed a timely appeal from an unemployment insurance decision dated March 25, 2011, reference 01, that allowed benefits to Darnell Smith. After due notice was issued, a telephone hearing was held April 27, 2011 with Mr. Smith participating. The employer did not respond to the hearing notice by providing the name and telephone number of a witness.

**ISSUE:**

Was the claimant discharged for misconduct in connection with his employment?

**FINDINGS OF FACT:**

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Darnell Smith was employed by Ferguson Enterprises, Inc. from May 2, 2005 until he was suspended on February 24, 2011 and discharged on the following day. He last worked as an order picker.

The final incident leading to the discharge occurred on February 24, 2011. The speed control on the order picker that Mr. Smith was operating stuck, making it impossible for him to stop at the end of a row before entering an aisle with more traffic. His supervisor believed that he was engaging in horseplay. Based on this incident and two prior accidents, Mr. Smith was discharged.

## REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence before the administrative law judge is sufficient to establish that the claimant was discharged for misconduct. It does not.

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.

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. See Iowa Code § 96.6-2. Among the elements it must prove is that the final incident leading directly to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). As noted above, the employer did not participate. The claimant's testimony is uncontradicted. The claimant testified credibly that the final incident was the result of a mechanical problem with the machinery, not because of horseplay. Finding no misconduct in the final incident, no disqualification may be imposed.

**DECISION:**

The unemployment insurance decision dated March 25, 2011, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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