

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**THOMAS M KOCHEN**  
Claimant

**APPEAL NO. 13A-UI-05358-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE HON COMPANY**  
Employer

**OC: 04/14/13**  
**Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Thomas Kochen, filed an appeal from a decision dated May 2, 2013, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on July 15, 2013. The claimant participated on his own behalf. The employer, The Hon Company (Hon), participated by Member and Community Relations Manager Kourtney Fox, Group Leader Mike Wiseman and was represented by Employers Edge in the person of Sandra Linsin.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Thomas Kochen was employed by Hon from June 13, 2011 until April 16, 2013 as a full-time fork truck operator. He had been given safety training on how to operate the fork truck within the work environment.

In August 2012 he received a final written warning for safety violation. He struck an I-beam which supported a walkway. On April 12, 2013, he ran over a pallet of parts because he was not “paying attention” or operating the fork truck as he was trained to do. When a load is too high to see around, the operations should operate the truck in reverse.

The matter was investigated and the claimant was discharged on April 16, 2013.

**REASONING AND CONCLUSIONS OF LAW:**

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 claimant had been advised his job was in jeopardy as a result of his safety violations in operating the fork truck. The second incident was the result of him not operating the fork truck according to guidelines and not paying proper attention to the work environment. The employer has the obligation to provide a safe work environment for all employees and the claimant's conduct interfered with its ability to do so. This is conduct not in the best interests of the employer and the claimant is disqualified.

**DECISION:**

The representative's decision of May 2, 2013, reference 01, is affirmed. Thomas Kochen is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs