

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GREGORY E JOHNSON
Claimant

APPEAL NO. 06A-UI-09875-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAMILY DOLLAR SERVICES INC
Employer

**OC: 09-03-06 R: 04
Claimant: Respondent (1)**

Section 96.5-1 – Voluntary Leaving
Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 26, 2006, reference 01, fact-finder's decision that held the claimant was eligible to receive unemployment insurance benefits because the claimant was discharged under non disqualifying conditions. After hearing notices were mailed to the parties, a telephone conference hearing was conducted in Des Moines, Iowa, on October 23, 2006. The claimant participated and testified at the hearing. Appearing as a witness for the employer was Ms. Sharon Beck, Human Resources Area Manager. Exhibits One through Five were received into evidence.

ISSUE:

Did the claimant voluntarily quit employment for reasons that qualify him to receive unemployment insurance benefits or did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds the following facts: Mr. Johnson was employed by Family Dollar Services, Inc. as a warehouse worker from May 15, 2006 until August 31, 2006 when he was discharged by the employer. Mr. Johnson worked on a full-time basis. His immediate supervisor was Warren Goessling.

Mr. Johnson was discharged from his job with the captioned employer when the company believed that the claimant had violated safety procedures by selecting cartons from a pallet on a raised level beyond the fall protection line without utilizing required fall protection equipment. On or about August 26, 2006, the claimant was working on a second floor area when a pallet of merchandise became obstructed on rollers after being unloaded on a second level tier by a forklift. Mr. Johnson freed the pallet by reaching near and slightly over a safety mark line. Work performed past the safety line requires that employees utilize a cable and harness to insure that they are prevented from falling from the raised area. As Mr. Johnson did not believe momentarily reaching over the line would constitute a violation, he did not attach the cable harness. The claimant's body trunk remained behind the line as he freed up the object that was

preventing the pallet from rolling forward. While performing his duties, the forklift deposited another pallet of merchandise causing the first pallet to roll forward and injure the claimant's ankle. Mr. Johnson promptly reported the incident and the circumstances to his immediate supervisor. The company investigated and determined that the claimant should be discharged as the company believed that he had extended himself into the safety area without being properly protected with a safety harness and wire. In an effort to determine whether he had acted inappropriately, the claimant subsequently asked another foreman about the proper way to perform that duty. The second foreman performed the duty in the same manner that the claimant had and indicated that it would not be a violation. Based upon the facts as the company knew them and the claimant's failure to aggressively assert that he had not stepped or remained in the danger area, the decision was made to terminate Mr. Johnson from his employment.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes the claimant was discharged for intentional disqualifying misconduct in connection with the employment. It does not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The evidence in the record establishes that Mr. Johnson believed that he was complying with company safety requirements when he extended a portion of his body past a safety mark line that required utilization of safety harnesses and cable. The claimant testified that he remained behind the line while attempting to free a stuck pallet and extended only a portion of his body into the safety area while doing so, allowing several feet of safety area to remain. The claimant that it was his understanding that freeing a pallet in this manner was acceptable and did not require the utilization of safety equipment. Subsequently, Mr. Johnson verified he had acted properly by directly asking another supervisor who confirmed that the claimant's manner of performing the duties were acceptable.

Although it is unclear why Mr. Johnson did not present his case fully at the time of discharge, nevertheless it is the opinion of the administrative law judge based upon the hearing records that intentional disqualifying misconduct on the part of the claimant has not been shown.

While the decision to terminate Mr. Johnson may have been a sound decision from a management viewpoint, the claimant's discharge was not the result of intentional disqualifying misconduct on the part of the claimant. The administrative law judge finds that the claimant was discharged under non disqualifying conditions.

DECISION:

The agency representative's decision dated September 26, 2006, reference 01, is affirmed. The claimant was discharged under non disqualifying conditions and is qualified to receive unemployment insurance benefits, provided that he meets all other eligibility requirements.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/kjw