

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH PURDY
Claimant

APPEAL NO: 09A-UI-06310-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

MATERIAL MANAGEMENT GROUP INC
Employer

OC: 03-29-09
Claimant: Appellant (1)

Section 96.5-2-a –Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 14, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 18, 2009. The claimant participated in the hearing. Kate Svoboda, Human Resources Assistant, and Josh Rubino, Supervisor, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a machine/forklift operator for Material Management Group from January 13, 2003 through March 27, 2009 when he was discharged for insubordination. He received written verbal warnings March 7, 2008; March 15, 2008; and August 11, 2008. The claimant toted the wrong product March 7, 2008, and failed to do a part check. He was working as a machine operator March 15, 2008, and shut down 35 minutes early. The employer directed him to do one more load but he refused. The claimant failed to properly pick up a product August 11, 2008, and the product spilled and had to be repackaged. He refused a written warning September 27, 2008, after he used profanity towards his supervisor. The claimant was driving the forklift when his supervisor wanted him to clean up totes. The claimant became angry, used profanity towards the supervisor and was sent home. Although the claimant was most recently working as a forklift driver, he had other duties as assigned and that included packaging parts. The claimant was asked March 26, 2009, to help package some parts on which the employer was behind in production. When the supervisor returned, the claimant was not packaging parts but was instead driving around on the forklift. The supervisor confronted the claimant and he shook his head before driving away in the forklift. Approximately 45 minutes later, the supervisor was handing out paychecks. The claimant refused to look at him, then grabbed the paycheck from the supervisor's hand and threw it on the floor. The supervisor told the claimant to be at a meeting in the office March 27, 2009, at 3:00 p.m. The

employer informed the claimant on March 27, 2009, that he was terminated and the claimant became belligerent and refused to sign the final incident report.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for job-related 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 claimant was discharged March 27, 2009, for insubordination. The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The claimant received four previous disciplinary warnings and knew his job was in jeopardy. The employer considered his actions March 27, 2009, so serious that his discharge was warranted. Consequently, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits must be denied.

DECISION:

The April 14, 2009, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs