

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DENNIS L PRANSCHKE**  
Claimant

**APPEAL NO. 14A-UI-03985-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SARA LEE CORP**  
Employer

**OC: 03/23/14**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated April 11, 2014, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on May 23, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Rodolfo Reyes participated in the hearing on behalf of the employer with witnesses, Cory Foust and Katie Hoffman.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as a feed mill driver from November 24, 1980, to March 26, 2014. He worked the first shift, which started at 4 a.m. Drivers were required to work until the loads assigned to the first shift were finished. It was common for the claimant to work about 12 hours on a shift.

The claimant had received warnings in 2010 for work performance issues. He was warned in September 2013 for making an inappropriate comment to a coworker and failing to follow instructions by not reporting to supervisors concerns about another employee. He was warned in November 2013 for aggressive and threatening behavior; he was using profanity, slammed doors, and threw his hardhat because he was upset by the smaller number of loads he was going to have for the day.

On March 20, 2014, at about 2:40 p.m. the feed mill supervisor, Cory Foust, requested that claimant take one more load that had been assigned to the first shift. He told Foust that he was not going to take the load, and after he preloaded his truck for the second-shift driver, he was going home. Foust directed the claimant to take the load two more times, but the claimant refused to take the load. The claimant probably would have been able to finish hauling the load by about 4 p.m. Although the claimant did not give a reason to Foust for refusing the load, he declined the load because he was tired and the truck he would have had to use to take the load was normally driven by a driver who smoked.

As a result of the claimant's refusal to take the load, a second-shift driver had to take it, which put the second shift behind on its loads.

On March 26, 2014, the employer discharged the claimant for insubordination in refusing to take the load as directed after considering his past disciplinary record.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I believe Foust's testimony that the request was made about 2:40 p.m. and the load could have been completed by about 4 p.m., which was a common time for the claimant to get off work.

The unemployment insurance rules provide: "While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act." 871 IAC 24.32(8).

The claimant's conduct in refusing to perform assigned work was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. He directly defied repeated instructions to take the load without a legitimate excuse. A current act of work-connected misconduct as defined by the unemployment insurance law has been established in this case, factoring in that the claimant had past written warnings regarding behavioral problems.

**DECISION:**

The unemployment insurance decision dated April 11, 2014, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs