

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DIBNY L DIALLO**  
Claimant

**APPEAL NO. 10A-UI-12330-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SCHENKER LOGISTICS INC**  
Employer

**OC: 08/01/10**  
**Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's August 25, 2010 determination (reference 01) that disqualified the claimant from receiving benefits and held the employer's account exempt from charge because the claimant had been discharged for disqualifying reasons. The claimant participated in the hearing. Blake Richards, a representative, appeared on the employer's behalf with Douglas Hills and Nicki Brick testifying on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in late August 2008. The claimant worked full-time as an operational trainer on second shift. Hills, the training and development manager, supervised the claimant. The employer's policy requires employees to immediately report all safety incidents to their immediate supervisor. Hills require trainers to contact management working on their shift and then call Hills when a safety incident occurs.

Although the claimant had not previously received any written warnings on April 6, 2010, she received a final written warning for offensive behavior or harassment toward other employees. After receiving the written warning, the claimant understood that if she had further violations, the employer could discharge her.

On July 14 and 20, the claimant was training employees how to operate a reach truck. On both days, a trainee hit a pallet, which resulted in some damage or injury. The claimant reported the incidents to management on duty, but Hills did not receive a call from the claimant about the incidents even though the claimant asserted she had called him. When Hills reported to work the next day, he learned about the incidents. The claimant understood that when Hills talked to her about these incidents, he indicated there was no problem.

On July 24, the claimant trained an employee on a reach truck. When she completed paperwork for this training, she completed paperwork indicating she had evaluated the employee's performance on a different piece of equipment. The equipment identified on the certification had been in the maintenance shop a few days. An employee notified Hills about the paperwork the claimant submitted and told him this truck was in maintenance and had been inoperable. When Hills talked to the claimant, she told him she had not meant to turn in that paperwork. The claimant completed the wrong form. The employee who received the training also signed the paperwork indicating he had been trained on equipment that was in the maintenance shop.

The employer discharged the claimant because she was on a final written warning and failed to call Hills on July 14 and 20 about safety incidents and completed paperwork indicating she gave an employee training that he had not received.

### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant asserted she called Hills to report the July 14 and 20 safety incidents, but he testified he did not receive her messages. Since he was not working when the safety incidents occurred, the claimant left a message. There is no way to establish whether the claimant did or did not call Hills on July 14 and 20 to report the safety incidents. The claimant reported the incidents to management and Hills knew about the incident when he came to work the next day. Even if the claimant did not call Hills to report the safety issues, her failure to do so does not amount to a substantial disregard of the employer's interests.

The claimant could very easily have completed the wrong paperwork. It is hard to imagine that the claimant intentionally tried to certify a supervisor of another department on equipment that was not available when there were not problems of a similar nature before.

Since the claimant was on a final written warning, the employer discharged her for mistakes she made when she submitted the wrong certification and for possibly failing to notify Hills immediately about safety incidents that occurred on July 15 and 20. While the employer had business reasons for discharging the claimant, the evidence does not establish that she

committed work-connected misconduct. Therefore, as of August 1, 2010, the claimant is qualified to receive benefits.

**DECISION:**

The representative's August 25, 2010 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but she did not commit work-connected misconduct. As of August 1, 2010, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw