

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JON ASKE
Claimant

IOWA ROTOCAST PLASTICS INC
Employer

APPEAL 20A-UI-06804-HP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant Jon Aske filed an appeal from a June 17, 2020 (reference 01) unemployment insurance decision that denied benefits based upon his discharge from employment. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for July 30, 2020. The hearing was rescheduled for August 6, 2020, pursuant to a request for the employer. Debra Aske represented her husband, Jon Aske during the hearing. Jon Aske appeared and testified. Troy Hagensick appeared and testified on behalf of the employer, Iowa Rotocast Plastics Inc. ("Iowa Rotocast"). Exhibit A was admitted into the record. I took administrative notice of the claimant's unemployment insurance benefits records maintained by Iowa Workforce Development.

ISSUE:

Was the Claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Aske commenced full-time employment in grizzly assembly for Iowa Rotocast on March 16, 2020. Aske operated a fork truck or forklift when working for Iowa Rotocast. Hagensick was his immediately supervisor.

On March 17, 2020, between 1:30 p.m. and 2:00 p.m., maintenance discovered a door was damaged. Video from that day revealed Aske had hit the door with his fork truck at 10:56 a.m. Hagensick called Aske into his office with the safety director. Hagensick told Aske he had hit the door with his fork truck, causing damage to the door and the fork truck. Aske responded he thought he had hit a bag of ice melt that morning and that he did not know he had hit and damaged the door or his fork truck. Iowa Rotocast revoked Aske's permit to drive the fork truck.

Hagensick determined Aske had been disciplined twice before for improperly using the fork truck and terminated his employment on March 18, 2020 for violating the forklift policy. Hagensick noted Aske had failed to report the damage, which is required by IRP Code of Conduct. Aske acknowledged he was required to report any damage he caused when he was working, but denied he knew he damaged the door and fork truck. Hagensick testified that under the forklift policy,

and employee is terminated for a third violation of the policy. Iowa Rotocast did not produce a copy of the forklift policy at hearing.

Hagensick provided Aske with a disciplinary/counseling report on August 20, 2019 for jumping off a forklift, in violation of the forklift policy. (Exhibit A page 3) Aske admitted he was disciplined on this date, but denied jumping off the forklift. He reported another employee was operating a forklift and he was having a hard time getting a pallet on a semi, so he stepped on the forklift to put extra weight on it. Aske admitted he signed the disciplinary notice, which noted any further policy violations would result in an unpaid suspension and/or termination. (Ex. A, p. 3)

Hagensick testified Aske had been disciplined in the past by the safety director for running the forks of his fork truck into a table. Aske had not reported the damage until he was confronted by the safety director. Aske admitted he ran a fork of his fork truck into the table, but reported it was an accident and he had not had time to report the damage to his supervisor before he was confronted about the damage. Iowa Rotocast did not provide a copy of the discipline. Hagensick did not testify when the incident occurred.

Hagensick reported he has disciplined other employees for causing damage to company property, but stated he had not terminated any other employees for violating the forklift policy.

REASONING AND CONCLUSIONS OF LAW:

Under Iowa Code section 96.5(2)a,

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits: . . .

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 disqualification shall continue 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 Iowa Administrative Code 24.31(1)a, defines the term "misconduct" 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 Iowa Legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 558 (Iowa 1979).

871 Iowa Administrative Code 24.32(4) also provides,

Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

And 871 Iowa Administrative Code 24.32(8) provides:

Past acts of misconduct. 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.

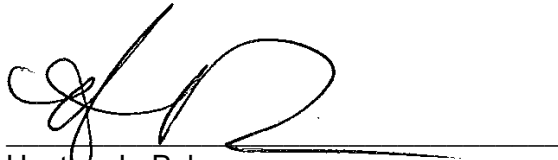
The employer bears the burden of proving the employee engaged in disqualifying misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6, 11 (Iowa 1982) The issue is not whether the employer made a correct decision in separating the claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262, 264 (Iowa Ct. App. 1984)

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits; such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806, 808 (Iowa Ct. App. 1984) The definition of misconduct in the administrative rule focuses on deliberate, intentional, or culpable acts by the employee. *Id.* When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* at 808-09. Negligence does not constitute misconduct unless it is recurrent in nature; a single act is not disqualifying unless it is indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986) Additionally, poor work performance is not misconduct in the absence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211, 213 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 666-69 (Iowa 2000) What constitutes misconduct justifying termination of an employee and what misconduct warrants a denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679, 680 (Iowa Ct. App. 1988) Instances of poor judgment are not misconduct. *Richers v. Iowa Dep't of Job Serv.*, 479 N.W.2d 308, 312 (Iowa 1991); *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 555 (Iowa Ct. App. 1986)

I find the conduct for which Aske was discharged was an isolated incident of poor judgment. Aske reported he looked behind his fork truck when he felt he made contact, and he saw a bag of ice melt. Aske testified he did not believe he had damaged the door or the fork truck. I also found his testimony regarding the August 2019 incident reasonable and consistent with the other evidence I believe. I do not find he jumped off a fork truck. And no date was provided for the first incident when Aske ran into a table with one of the forks. Iowa Rotocast has not met its burden to prove Aske acted deliberately or with recurrent negligence in violation of a company policy, procedure, or prior warning. Iowa Rotocast has failed to establish any intentional and substantial disregard of its interest that rises to the level of willful misconduct. As such, benefits are allowed, provided Aske is otherwise eligible.

DECISION:

The June 17, 2020 (reference 01) unemployment insurance decision denying unemployment insurance benefits is reversed. The employer has not established the claimant was discharged for misconduct for a disqualifying reason. Benefits are allowed provided the claimant is otherwise eligible.

A handwritten signature in black ink, appearing to read 'H. Palmer', is written over a horizontal line.

Heather L. Palmer
Administrative Law Judge
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Iowa Workforce Development
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Des Moines, Iowa 50319-0209
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August 17, 2020
Decision Dated and Mailed

hlp/mh