

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRIDGET P DE MENT**  
Claimant

**APPEAL NO. 07A-UI-11193-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**STAFFCO OUTSOURCE MANAGEMENT**  
Employer

**OC: 10/28/07 R: 04  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Staffco Outsource Management (employer) appealed a representative's November 28, 2007 decision (reference 01) that concluded Bridget DeMent (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 18, 2007. The claimant participated personally and through Joseph Kagemann, friend/former co-worker, and Johnny Mertens, former co-worker. The employer was represented by Kelli Graves, Unemployment Specialist, and participated by Theresa Jacobs, Human Resource Manager; Jennifer Schwartz, Safety Manager; and Brittany Klouda, Production Worker. The employer offered and Exhibit One was received into evidence.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on July 16, 2006, as a full-time forklift operator. The claimant signed for receipt of the employer's handbook on July 12, 2006. The claimant repeatedly reported to the employer that a young co-worker stepped out in front of her when she was driving. The claimant was overly cautious because she had problems with her forklift brakes in the past. The claimant asked the employer to speak to the co-worker. When the claimant told the co-worker to be careful, the co-worker smirked at the claimant.

On October 30, 2007, the co-worker walked in front of the claimant as she was driving the forklift. Shortly thereafter the co-worker was laughing. Later, the co-worker reported to the employer that the claimant tried to run her over and she was fearful. The employer terminated the claimant on October 31, 2007. No other employees saw the claimant acting inappropriately except the young co-worker.

The claimant's and the employer's testimony is inconsistent. The administrative law judge finds the claimant's testimony to be more credible because she provided a second eyewitnesses to the events for which she was terminated. The employer provided one witness to support its case.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for 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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative's November 28, 2007 decision (reference 01) is affirmed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/kjw