

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TOMAS D KRUSE**  
Claimant

**APPEAL NO. 09A-UI-01658-MT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OMEGA CABINETS LTD**  
Employer

**OC: 11/23/08 R: 03  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated January 30, 2009, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on February 23, 2009. Claimant participated personally. Employer participated by Jodi Schaefer, Human Resource Representative.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on December 17, 2008.

Claimant was discharged on December 17, 2008 by employer because claimant had a forklift accident on December 16, 2008 that caused damage. The weather was bad on the day of the accident. The path used by claimant had snow and was quite slick. Claimant thought the area near the door was cleaned. The area was not clean and it caused the forklift to slide out of control thereby damaging the door. Claimant was driving slower due to the snow that day.

Claimant had two prior warnings on his record for forklift accidents.

**REASONING AND CONCLUSIONS OF LAW:**

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.

871 IAC 24.32(8) provides:

(8) 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 gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant allegedly violated employer's policy concerning preventable accidents. Claimant was warned concerning this policy.

The last incident, which brought about the discharge, fails to constitute misconduct because the accident was not the result of carelessness or an intentional policy violation. The accident was caused in part by inclement weather which put snow on claimant's path to and from the warehouse. The snow contributed to the accident. Claimant had compensated for the slick pathway but it just did not work. This is neither carelessness nor a preventable accident because the snow is a mitigating factor. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated January 30, 2009, reference 01, is affirmed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Marlon Mormann  
Administrative Law Judge

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Decision Dated and Mailed

mdm/pjs