

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAVID M PRISKE**  
Claimant

**APPEAL NO. 08A-UI-04171-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NASH FINCH CO**  
Employer

**OC: 03/30/08 R: 03  
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, David Priske, filed an appeal from a decision dated April 22, 2008, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on May 27, 2008. The claimant participated on his own behalf. The employer, Nash Finch, participated by Shipping Supervisor Brian Cooper and Human Resources Representative Dennis Glover and was represented by TALX in the person of Tracy Taylor. Exhibits One and Two were admitted into the record.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

David Priske was employed by Nash Finch from August 2, 2006 until April 3, 2008, as a full-time warehouse order selector. He received a copy of the employee handbook, and the safety rules were posted on a bulletin board in the main hallway of the warehouse. The safety rules require the immediate reporting of any damage of property or equipment. The handbook states disciplinary action, up to and including discharge, may occur for violating any safety rules.

On March 31, 2008, the claimant was operating a piece of heavy equipment known as a high-lift. He ran into a steel door, which caused the concrete-block wall to bow out. There were pieces of concrete in the aisle. Some time later another employee reported the damage to Supervisor Brian Cooper, who in turn reported it to another supervisor, Eric Swierk. Both supervisors checked out the wall, which was a weight-bearing wall, and then checked warehouse equipment for tell-tale damage. When Mr. Cooper checked out Mr. Priske's high-lift for damage, the claimant acknowledged he had run into the wall but had not reported it.

Mr. Priske was suspended the next day until the conclusion of the investigation. The damage to the wall was approximately \$2,000.00. Mr. Swierk consulted with Human Resources Representative Dennis Glover and he conferred with the corporate human resources

department and the regional manager. The decision was made to discharge the claimant for causing the accident and failing to immediately report it as required.

**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.

The damage to the wall was certainly not intentional and there is insufficient evidence to determine whether it was negligent. However, the failure to report the accident and the damage was intentional and a violation of an important safety rule. The weight-bearing wall was damaged to the extent that there were pieces of concrete in the aisle, certainly not something that could be overlooked even in the most cursory examination.

The claimant's failure to promptly report serious damage to a weight-bearing wall had the potential to cause more damage to the property and possibly to personnel. This is a violation of the duties and responsibilities the employer has the right to expect of an employee. It is conduct not in the best interests of the employer and the claimant is disqualified.

**DECISION:**

The representative's decision of April 22, 2008, reference 01, is affirmed. David Priske is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw