

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WADE A BUSS

Claimant

APPEAL NO. 11A-EUCU-00537-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PANAMA TRANSFER INC

Employer

OC: 03/14/10

Claimant: Respondent (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(5) – Trial Period of Employment

STATEMENT OF THE CASE:

Panama Transfer, Inc. filed a timely appeal from an unemployment insurance decision dated June 6, 2011, reference 01, that allowed benefits to Wade A. Buss. After due notice was issued, a telephone hearing was held July 5, 2011, with Mr. Buss participating. President Dean Kloewer and Wellsburg Terminal Manager Mark Fogt participated for the employer.

ISSUE:

Was the claimant discharged for misconduct?

FINDINGS OF FACT:

Wade A. Buss was employed as a dock worker by Panama Transfer, Inc. from April 6, 2011, until he was discharged May 6, 2011, because he wasn't catching on to the requirements of the job fast enough. In particular, Mr. Buss was loading some items onto the wrong trucks. The errors were not intentional.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with his employment. It does not.

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. See Iowa Code section 96.6-2. A discharge during a probationary or trial period of employment because of inability is not deemed to be a discharge for misconduct. See 871 IAC 24.32(5). Absent evidence of deliberate wrongdoing, no disqualification may be imposed.

DECISION:

The unemployment insurance decision dated June 6, 2011, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw