

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CARY WAGONER
Claimant

VTI ARCHITECTURAL PRODUCTS INC
Employer

APPEAL 15A-UI-04931-EC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant/appellant, Cary Wagoner, filed an appeal from the April 15, 2015 (reference 01) unemployment insurance decision that denied benefits based upon his discharge for misconduct, specifically for engaging in too much horseplay while on duty. The parties were properly notified about the hearing. A telephone hearing was held on May 19, 2015. The claimant participated. The employer, VTI Architectural Products, Inc., participated through the following witnesses: Mary Clark, HR Administrator; Efrain Rojas, Supervisor; Claudia Livermore, Shipping Department employee; and Ted Schafer, Inspection Department employee.

ISSUE:

Was the separation from employment a discharge for misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as a shipping coordinator in the employer's shipping department from September 21, 1989 until his termination from this employment on March 19, 2015.

The employer, VTI Architectural Products, Inc., makes and ships solid core wood doors, which weigh an average of 120 pounds. The claimant works in the shipping department, where these 120 pound wood doors are transported on forklifts. This employer takes forklift safety very seriously. The employer has a written policy regarding forklift safety and requires annual training on proper procedures to use when approaching forklifts. The claimant most recently completed this annual training on May 2, 2014.

The claimant's employment was terminated for misconduct, after an incident on Friday, March 13, 2015. He violated the company's forklift safety rules when he came up behind a forklift operated by co-worker Claudia Livermore without making required eye contact with her. This eye contact is required to ensure that the forklift driver knows that the other employee is there.

Ms. Livermore did not know that the claimant was behind her forklift as she was backing up because he had not followed the proper procedure. The forklift ran over the claimant's left foot.

Ms. Livermore and another co-worker, Ted Schafer, were consolidating doors at the time. The claimant admitted that he did not properly approach the forklift and make sure that he had the driver's attention as is required by company policy. Mr. Schafer watched Ms. Livermore back up the forklift. Mr. Schafer then saw the claimant's head pop up on the other side of the forklift and noticed his hand reaching up toward Ms. Livermore.

The claimant did not immediately report the incident. His supervisor, Efrain Rojas, heard about the incident from another employee. He was not seriously injured but Mr. Rojas noticed that he was limping. The claimant claimed that he was fine and continued working, despite encouragement to have his foot checked out.

The employer conducted an investigation soon after this incident. Following the investigation, the claimant's employment was terminated for violating this important safety rule. His actions were considered to be a serious safety violation.

The claimant admitted that he engaged in horseplay around the forklifts and stated that he does "mess around to keep things light."

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from his employment due to job-related misconduct. Benefits are denied.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(1)a, (8) provide:

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

(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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

The undisputed evidence clearly shows that the claimant violated an important safety rule when he failed to properly approach the forklift on March 13, 2015. He violated this rule despite his knowledge of this rule and the annual forklift safety training he received. Even though the claimant was not seriously injured when the forklift backed up over his foot, the employer's safety policy was implemented for the safety of all employees. I agree with the employer's witnesses' assertions that this was a serious safety violation. The employer immediately investigated the incident and determined that the seriousness of the safety violation warranted termination for misconduct. The evidence clearly showed that the claimant intentionally made the deliberate decision to violate the employer's safety policy. This was deliberate disqualifying misconduct. Benefits are denied.

DECISION:

The April 15, 2015 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Emily Gould Chafa
Administrative Law Judge

Decision Dated and Mailed

ec/can