

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID H JOBE
Claimant

APPEAL NO: 06A-UI-09812-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**RICHWELL CARPET & CABINET
CENTER INC**
Employer

**OC: 09/03/06 R: 03
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Richwell Carpet & Cabinet Center, Inc. (employer) appealed a representative's September 26, 2006 decision (reference 01) that concluded David H. Jobe (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 23, 2006. The claimant participated in the hearing. Newell Palen appeared on the employer's behalf and presented testimony from one other witness, Mike Luke. During the hearing, Employer's Exhibits One through Three were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on September 20, 2004. He worked part time (30 to 35 hours per week) as a warehouse employee in the employer's retail carpet and cabinet business. His last day of work was September 5, 2006. The employer discharged him on that date. The reason asserted for the discharge was unsafe operation of a forklift.

On September 1, the claimant had been moving a roll of carpet using a carpet pull attached to a lift truck. As he approached the location into which the roll was to be placed, the pull began to dislodge from its fastening to the lift truck and began to fall. The carpet roll ultimately landed on the stack of rolls onto which it was being placed. The reason the pull dislodged from the fork truck was at least in part because only one of two bolts were used to fasten it to the fork truck; however, the second bolt was bent and the employer's management had been aware that it was regularly operated with only one bolt securing it. The employer also asserted that the claimant had failed to properly secure a safety clip onto the lift, and that it would have been impossible for the carpet pull to have moved vertically and come out if it had been clipped into the

horizontal position. The claimant asserted that the clip had been used and to the best of his knowledge had been in its proper position.

The claimant had received a warning on August 10, 2005 for damage to merchandise unrelated to safe operation of the lift truck. On September 19, 2005 he received a warning for causing damage to a delivery van, again unrelated to the safe operation of the lift truck. His final warning was on June 30, 2006 for an issue of insubordination, again unrelated to the safe operation of the lift truck.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

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.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The focus of the definition of misconduct is on acts or omissions by a claimant that “rise to the level of being deliberate, intentional or culpable.” Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer’s interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer’s interest, or
 2. The employee’s duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is his asserted unsafe operation of the lift truck on September 1, 2006. Under the circumstances of this case, the claimant’s failure to take additional precautions that day was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant’s actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative’s September 26, 2006 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs