IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

PAT J BUCHANAN
Claimant

RYDER INTEGRATED LOGISTICS INC
Employer

APPEAL NO: 12A-UI-03738-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/25/11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Pat J. Buchanan (claimant) appealed a representative's April 6, 2012 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Ryder Integrated Logistics, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 25, 2012. The claimant participated in the hearing. Ellen Heuer appeared on the employer's behalf and presented testimony from two other witnesses, Chad Borwig and Ross Hanson. 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?

OUTCOME:

Reversed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on July 1, 2010. He worked full-time as a material handler at the employer's Waterloo, Iowa warehouse. His last day of work was March 16, 2012. The employer discharged him on that date. The reason asserted for the discharge was having a third safety violation within 36 months.

The employer's policy provides for discharge if an employee has three safety violations in a 36-month period. The claimant had been given a first documented verbal warning on June 28, 2011 for an incident with a forklift and had been given a written warning and suspension on January 20, 2012 for another incident with a forklift. The employer asserted that a third safety violation had occurred on March 14; the claimant's supervisor reported to the employer that on that date he had seen the claimant climbing on top of some containers, and that he had previously, perhaps in early February, also seen the claimant climbing on the containers and had verbally reprimanded him then for being on the containers. When the claimant was

confronted about this on March 16, he denied that he had ever climbed on the containers. However, the employer's representative to whom he was speaking responded that he had to take the word of the claimant's supervisor. The claimant further testified at the hearing under oath that he had never climbed on the containers, but that he believed that the supervisor had been "out to get him" for unknown reasons. The claimant's former supervisor was not available to provide testimony at the hearing; his last day with the employer was also March 16, having given prior notice that it would be his last day.

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).

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is that there had been a third safety violation within 36 months on March 14. The claimant's first-hand testimony was that he had not climbed on the containers as alleged. The employer relies exclusively on the second-hand account from the claimant's former supervisor; however, without that information being provided first-hand, the administrative law judge is unable to ascertain whether the supervisor might have been mistaken, whether he actually observed the incident, or whether he is credible. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant in fact committed a third safety violation. 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 April 6, 2012 decision (reference 01) is reversed. 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.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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