

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS W SPENCER
Claimant

APPEAL NO. 08A-UI-01432-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RYDER INTEGRATED LOGISTICS INC
Employer

**OC: 06/17/08 R: 03
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Thomas Spencer filed a timely appeal from the February 6, 2008, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on February 26, 2008. Mr. Spencer participated. Chad Borwig, Customer Logistics Manager, represented the employer and presented additional testimony through Bill Hulme, Senior Logistics Manager. Exhibits One through Eleven were received into evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Thomas Spencer was employed by Ryder Integrated Logistics as a full-time material handler from June 26, 2006 until December 21, 2007, when Brian Davis, Group Logistics Manager, discharged him for creating a safety risk through horseplay.

The final incident that prompted the discharge occurred on December 20, 2007. Mr. Spencer was walking in the vicinity of, and in the same direction as, a reach truck being operated by material handler Dustin Abbas. A reach truck is a forklift operated in a standing position. Mr. Spencer was heading to the restroom and Mr. Abbas was in the middle of a time-sensitive task. Mr. Abbas said something to Mr. Spencer to indicate that he needed Mr. Spencer to move more quickly. In response, Mr. Spencer turned around and walked toward the reach truck, forcing Mr. Abbas to slow down and to move in a different direction than normal. Mr. Spencer then approached the reach truck and, with a closed fist, hit a control on the reach truck that disconnected the battery. Disconnecting the battery disconnected the brakes and steering. The reach truck weighs 11,000 pounds. Mr. Spencer continued on his way to the restroom. Team Leader Daniel Payne had been walking behind Mr. Spencer and witnessed the incident. Mr. Payne reported the matter to the management team.

Chad Borwig, Customer Logistics Manager, investigated the matter the same day. Mr. Borwig collected written statements from Mr. Spencer, Mr. Abbas, and Mr. Payne. Mr. Borwig then notified Mr. Spencer that he was suspended pending the outcome of the investigation. Mr. Spencer acknowledged that he had exercised poor judgment by hitting the battery disconnect on the reach truck. Mr. Borwig considered the matter with other members of the management team. The employer considered that Mr. Spencer was himself a forklift operator and had been trained regarding safe operation of the equipment. The employer considered that Mr. Spencer had participated in safety training that had occurred on about July 30, 2007. That training, and the associated written safety policy, had stressed the prohibition against horseplay. Mr. Spencer had signed his acknowledgement of the written policy on July 30, 2007. The training had occurred after an employee was seriously injured while operating a reach truck during horseplay. Mr. Spencer was aware of the prior accident. Finally, the employer considered that Mr. Spencer had received a prior reprimand for unsafe operation of a forklift. The management team decided to discharge Mr. Spencer and Mr. Borwig notified Mr. Spencer by telephone on the evening of December 20, 2007. The employer followed up with a termination letter the next day.

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 employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits.

Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The greater weight of the evidence in the record establishes misconduct in connection with the employment. The evidence indicates that Mr. Spencer intentionally disconnected battery power to the reach truck. The evidence indicates that immediately prior to disconnecting the power, Mr. Spencer intentionally created a safety risk by walking in the direction of the oncoming reach truck, forcing the driver to alter course. The evidence indicates that Mr. Spencer was fully aware that disconnecting the battery would also disable the brakes and steering on a heavy and potentially dangerous piece of equipment. The evidence indicates that Mr. Spencer was aware that a coworker's similar conduct had resulted in serious injury to another coworker. Mr. Spencer attempted in his testimony to minimize the seriousness of his conduct and to suggest a friendly encounter with Mr. Abbas. The weight of the evidence indicates that this version of events is not credible.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Spencer was discharged for misconduct. Accordingly, Mr. Spencer is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Spencer.

DECISION:

The Agency representative's February 6, 2008, reference 02, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he

has worked in and paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css