

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICK MIOVER
Claimant

APPEAL NO: 14A-UI-09424-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

BAZOOKA FARMSTAR INC
Employer

OC: 08/17/14
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 9, 2014, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 1, 2014. The claimant participated in the hearing. Travis Colvin, Operations Manager; Amanda Russel, Human Resources Generalist; Ron Peiffer, Supervisor of Operations; and Roger Milks, Constant Improvement Manager; participated in the hearing on behalf of the employer. Employer's Exhibits One through Six were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time welder/painter for Bazooka Farmstar from March 10, 2014 to August 1, 2014. He was discharged for hitting a circuit breaker with a fork lift and failing to report the incident and resulting damage to the employer.

During the morning of August 1, 2014, the breakers in an area of the plant started tripping and the employer originally thought it was overloaded with too many items running off of it, but when Constant Improvement Manager Roger Milks went to the area he discovered the circuit breaker was not overloaded. He looked at the circuit breaker and determined it had been hit and damaged by fork lift forks. Mr. Milks walked around asking if anyone had seen the incident that damaged the circuit breaker and after about 45 minutes to one hour two employees contacted Mr. Milks and indicated they saw the claimant hit the breaker box with the fork lift he was driving. Consequently, Mr. Milks approached the claimant to ask him about it. The claimant was not aware the breakers were tripping because it did not affect his work area.

After some initial questioning, the claimant admitted to Mr. Milks he thought he could have hit something earlier when he picked up a large hose reel weighing between 600 and 1,000 pounds and heard a "pop." It was not the kind of noise that would prompt him to get off the fork lift and

check for damage. He did not think there were any hazards around the area of the hose reel and circuit breaker before he started moving the hose reel but stated he must have miscalculated the length of the forks and then hit the circuit breaker because once he picked up the hose reel his view was obstructed.

The employer assigned Supervisor of Operations Ron Peiffer to conduct a safety investigation and Mr. Peiffer concluded the accident and the claimant's subsequent failure to report it could have had serious safety implications because there was no way to predict where that electricity was going and it could have shorted out and injured several people, including the claimant when he was on the forklift. The accident forced metal into contact with the live wires in the circuit box which could have gone to welders or steel posts or a number of areas.

After concluding its investigation, the employer terminated the claimant's employment August 1, 2014. The claimant, who had no previous verbal or written warnings, was discharged rather than warned in writing because he failed to report the incident to the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The claimant did make a mistake in not being more aware of his surroundings when moving the hose reel and not getting off the forklift to see if there was a problem when he heard a popping noise, even if he did not think he caused the noise or that it was anything serious. Had he been aware he caused damage to the circuit breaker he would have an absolute duty to report the accident to the employer immediately. In this situation however, the claimant credibly testified he was not aware he caused an accident or any damage until Mr. Milks asked him about it and he concluded he must have done it because he had the forklift right by the circuit breaker and was the only employee to operate the forklift in that area in that time frame. The claimant admitted his error as soon as the employer confronted him about it and while it's true he should have been more observant and vigilant, the evidence does not demonstrate the claimant's actions were willful or intentional job misconduct. He did not know he hit and damaged the circuit breaker significantly and consequently did not report it. The claimant did not have any other documented safety issues or verbal or written warnings for anything else during his tenure with the employer. Under these circumstances, the administrative law judge must conclude the claimant's actions were an isolated incident of misconduct and as such do not rise to the level of disqualifying job misconduct. Therefore, benefits must be allowed.

DECISION:

The September 9, 2014, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs