

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WAYNE LCOOK**  
Claimant

**APPEAL NO. 08A-UI-05767-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PRIORITY COURIER INC**  
Employer

**OC: 05/18/08 R: 02  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated June 25, 2008, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on July 16, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing with his representative, Robert Horak. Jon Jero participated in the hearing on behalf of the employer. Exhibit A was admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as a dockworker from November 1, 2004, to May 16, 2008. The claimant's primary job involved taking freight from pallets and placing it on a sorting belt where the freight was scanned and sorted to different routes. On December 28, 2005, the claimant was warned about failing to heed requests to slow down while loading freight onto the sorting belt. The claimant was warned on April 6, 2006, about conflicts with coworkers and carelessly handling freight by pushing the freight too forcefully down the belt, which resulted in other workers getting their hands pinched. On February 8, 2007, the claimant received a written warning for harassing a coworker and pushing freight forcefully down the sorting belt.

On May 15, 2008, an unknown employee reported to the dock foreman, Walt Wilson, that the claimant had pushed freight down the sorting belt too forcefully and had pinched the employee's hand and that other employees were planning to circulate a petition to have the claimant removed because of his conflicts with coworkers. Wilson relayed these complaints to the terminal manager, Jon Jero. Based on these complaints and the claimant's past history, Jero discharged the claimant on May 16, 2008.

At no time on or about May 15 did the claimant deliberately pushed freight forcefully down the sorting belt or with the intention of striking a coworker. No one said anything to the claimant about how he was pushing the freight too hard, that he had pinched a coworker's fingers, or was

being belligerent toward other employees. When the claimant was discharged, only his alleged careless handling of freight was mentioned.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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.

871 IAC 24.32(8) provides:

(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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. 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 findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. The employer has failed to meeting its burden of proving the final act was misconduct. Jero did not have any personal knowledge about what transpired on May 15, and the evidence on this point is double hearsay from an unknown employee who was not present at the hearing to testify under oath and subject cross-examination. This evidence is outweighed by the claimant's direct testimony. While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established.

**DECISION:**

The unemployment insurance decision dated June 25, 2008, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw