

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHN G BLASKOVICH**  
Claimant

**APPEAL NO. 07A-UI-00569-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ANNETT HOLDINGS INC**  
Employer

**OC: 08/06/06 R: 02  
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Annett Holdings, Inc. filed an appeal from a representative's decision dated January 9, 2007, reference 05, which held that no disqualification would be imposed regarding John Blaskovich's separation from employment. After due notice was issued, a hearing was held by telephone on February 2, 2007. Mr. Blaskovich participated personally. The employer participated by Travis Bellman, Appearance Shop Manager, and Joseph Benda, Appearance Technician. The employer was represented by Kellen Anderson of TALX Corporation. Exhibit One was admitted on the employer's behalf. A document received on Mr. Blaskovich's behalf after the record was closed was not considered as it was not submitted prior to the hearing and there was no request to leave the record open for its receipt. The document consisted of a statement from Rose Lemke.

**ISSUE:**

At issue in this matter is whether Mr. Blaskovich was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Blaskovich was employed by Annett Holdings, Inc. from September 8 until December 8, 2006 as a full-time appearance technician. He was discharged for operating a forklift on December 8. His job did not require the use of a forklift. He operated the forklift on this occasion in order to move it from one bay to another to make room for other work. The senior employee acting as supervisor observed his actions but did not say anything to him. Mr. Blaskovich did not use the forklift to raise and lower a 48-foot flatbed trailer.

Mr. Blaskovich had not received any written warnings prior to his discharge. He had received a verbal warning because of complaints that he disappeared from the work area for long periods of time. He was notified of his discharge on December 8, 2006.

**REASONING AND CONCLUSIONS OF LAW:**

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Blaskovich was discharged for his unauthorized operation of the forklift on December 8. He was acting in good faith when he moved the forklift to make room for other work. Although he should have waited for an authorized operator, his actions took place in full view of the acting supervisor. At most, Mr. Blaskovich was guilty of using poor judgment in not waiting for an authorized operator. An isolated instance of poor judgment does not constitute disqualifying misconduct. See 871 IAC 24.32(1).

The employer had prior complaints of Mr. Blaskovich being absent from his work area. The evidence failed to establish that he was not otherwise performing work-related duties. There was no evidence that he was observed loafing on the job. For the above reasons, the administrative law judge concludes that there was not sufficient evidence to establish that Mr. Blaskovich was away from his work area taking unauthorized breaks.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that the employer has failed to sustain its burden of proof in this matter. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons cited herein, benefits are allowed.

**DECISION:**

The representative's decision dated January 9, 2007, reference 05, is hereby affirmed. Mr. Blaskovich was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/css