

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WISSAM R JEBER**  
Claimant

**APPEAL NO: 13A-UI-02662-E**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TPI IOWA LLC**  
Employer

**OC: 01/27/13**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the March 4, 2013, reference 02, decision that denied benefits. After due notice was issued, a hearing was held in Des Moines, Iowa, before Administrative Law Judge Julie Elder on April 1, 2013. The claimant participated in the hearing with Attorney Christopher Rottler. The employer did not appear for the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

**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 fiber glass worker for TPI Iowa from May 23, 2012 to January 25, 2013. The claimant was working January 25, 2013, when Team Lead Danny Haney ran over the claimant's foot with a three wheel tricycle and rather than pulling forward off the claimant's foot, Mr. Haney left it on his foot. The claimant was not required to wear safety boots so his foot was not protected. He asked Mr. Haney to move the tricycle off his foot and Mr. Haney made several racial slurs against the claimant, such as, "That's why you drive a camel in your country. You're just like a camel. Go back to your country," and was laughing as he made the remarks. The claimant told Mr. Haney his foot hurt and asked him to move the trike off it and Mr. Haney stated, "Just take your camel and drive back to your country." The trike remained on the claimant's foot until the claimant grabbed the handle bars of the bike and used just enough force to move the trike backward off his foot. Mr. Haney fell off the trike. Mr. Haney then told everyone in his area to go to break. While on break the claimant told another shift lead what happened and he told the claimant not to worry about the incident, stating, "I will take care of everything." Shortly after the claimant returned from break Mr. Haney apologized to him for his actions with the trike and for the slurs. The claimant was called to the office for a meeting a few hours later and the employer attempted to have him sign a paper stating he voluntarily quit his employment. The claimant reads limited English but understood the employer's request that he sign indicating he was voluntarily quitting his job and he refused

to do so. The shift lead the claimant talked to while on break was in attendance at the meeting but did not say anything in the claimant's defense. The employer then terminated the claimant's employment without giving him a reason for his discharge. The claimant received a verbal warning approximately one month earlier because he was 15 to 20 minutes tardy due to a snow storm.

## **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 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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). 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 was effectively assaulted by Mr. Haney when he ran the trike over his foot and left it there despite the claimant's repeated requests that he move the trike off his foot. Mr. Haney's refusal to move the trike was accompanied by racial slurs and after several requests for Mr. Haney to move the trike off his unprotected foot, the claimant pushed the trike backward off his foot by the handle bars and Mr. Haney apparently fell off the trike. The claimant's actions were reasonable given the circumstances of Mr. Haney's refusal to move the trike off his foot.

He did not react to the racial slurs. The claimant had only received one verbal warning during his tenure with the employer after he was 15 to 20 minutes late following a snow storm approximately one month prior to his termination. There is no evidence that the claimant was a problem employee or had been through any other disciplinary action steps or reached the point where his actions would have been the final incident in a progressive disciplinary process. When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer did not participate in the hearing and failed to provide any evidence. The evidence provided by the claimant does not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. The employer has not met its burden of proving disqualifying job misconduct. Therefore, benefits are allowed.

**DECISION:**

The March 4, 2013, reference 02, decision is reversed. 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/tll