

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRIS J ANDERSON**  
Claimant

**APPEAL NO: 10A-UI-10468-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT & COMPANY**  
Employer

**OC: 06/20/10**  
**Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The employer appealed a representative's July 14, 2010 decision (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. A telephone hearing was held on September 9, 2010. The claimant participated in the hearing. Jenny Mora, the employment manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the employer discharge the claimant for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on July 11, 2005. The claimant worked full time in production.

During his employment, the employer gave the claimant a verbal warning for failing to wear a seat belt on March 30, 2010. On April 1, the claimant received a written warning and a suspension for accidentally damaging a door. The claimant damaged a door when he was driving a forklift and he drove when his glasses fogged up which resulted in hitting the bottom of a door.

On June 18, the claimant was operating a pallet jack. He had to stand on the pallet jack while he operated it. The claimant's size 14 shoe went over the ledge he stood on. Another employee who was operating a fork lift accidentally hit the claimant's foot. The claimant's foot was injured and he went to the hospital to have his foot checked. The employer concluded the claimant operated the pallet jack unsafely by allowing his foot to go over the edge of the pallet jack. The employer discharged him because this was the third incident of failing to operate the employer's equipment safely. The employer discharged the claimant on June 22, 2010.

## **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

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. 871 IAC 24.32(8)

The claimant knew or should have known his job was in jeopardy after he was suspended in April for damaging a door. On June 18, when the claimant operated a pallet jack, he placed his feet on the equipment the best way he could. The area he had to stand on the pallet jack was not large enough for his size 14 shoe. The fact his heel hung over the edge of the pallet jack was beyond the claimant's control. The facts do not establish that the claimant committed a current act of misconduct. Therefore, as of June 20, 2010, the claimant is qualified to receive benefits.

## **DECISION:**

The representative's July 14, 2010 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute a current act of work-connected misconduct. As of June 20, 2010, the claimant is qualified to receive benefits, provided he meets all eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css