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

RICK E FARRINGTON
Claimant

APPEAL NO. 10A-UI-11186-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALPLA INC
Employer

OC: 06/20/10
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated August 3, 2010, reference 01, which denied benefits based upon his separation from Alpla Inc. After due notice, a telephone hearing was held on September 23, 2010. Mr. Farrington participated personally. The employer participated by Julie Underwood, Human Resource Manager; Mark Lovas, Team Leader; and James Parkhill, Production Manager.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Rick Farrington was employed by Alpla Inc. from September 15, 2008 until June 11, 2010 when he was discharged from employment. Mr. Farrington held the position of full-time forklift operator and was paid by the hour. His immediate supervisor was Mark Lovas.

Mr. Farrington was discharged based upon a number of incidents that took place during the early morning hours of June 5, 2010. On that date Mr. Farrington was observed by his team leader, Mark Lovas, operating a company forklift in an erratic and unsafe manner. The claimant was observed running into and damaging a safety gate, crossing a pedestrian safety walkway and damaging company product on a pallet nearby. The claimant was observed nearly striking an area where high value company molds are stored. Based upon the erratic nature of Mr. Farrington's operation of the forklift and other behavior that Mr. Lovas considered to be strange, a decision was made to send Mr. Farrington home at approximately 2:00 a.m. that morning. It appears that the employer suspected that Mr. Farrington was under the influence of a substance but elected not to have the claimant drug tested. Prior to beginning his work shift Mr. Farrington had not indicated to Mr. Lovas or any other management personnel that he was tired or unable to safely operate the forklift that he was assigned to that night.

The matter was reported to the company's production manager, Mr. Parkhill. Mr. Parkhill personally reviewed security camera tape which showed Mr. Farrington driving the forklift into areas that were clearly marked as pedestrian or storage areas and observed the claimant driving erratically and "spinning the forklift." Mr. Parkhill's review of the security tape also showed Mr. Farrington striking a company safety gate while operating the forklift erratically.

Mr. Farrington next reported to work on June 11, 2010. The claimant could provide no reasonable explanation for his conduct. A decision was made to terminate the claimant based upon the numerous safety violations that had been personally observed by Mr. Lovas and confirmed by Mr. Parkhill via the company's security camera tape.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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 evidence in the record shows that Mr. Farrington was not only observed personally by the company lead person, Mark Lovas, but was observed as well on company security tapes operating a company forklift in an erratic and dangerous manner. The evidence establishes that Mr. Farrington had been trained and had demonstrated the ability to correctly operate the forklift

that he was assigned to during the early morning hours on the day in question. The claimant was observed recklessly and erratically damaging company property and operating the forklift in prohibited areas. Misconduct showed a willful disregard for the employer's interests and standards of behavior and thus is disqualifying conduct under the provisions the Employment Security Act. Benefits are withheld.

DECISION:

The representative's decision dated August 3, 2010, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, providing that he is otherwise eligible.

_____
Terence P. Nice
Administrative Law Judge

_____
Decision Dated and Mailed

css/css