IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

RONALD FIANDALO
Claimant

MENARD INC
Employer

APPEAL NO. 10A-UI-03416-H2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02-07-10
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 25, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 23, 2010. The claimant did participate. The employer did participate through Bob Rankin, Assistant General Manager and (representative) Dan Gerovac, Manager.

ISSUE:

Was the claimant discharged due to job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a general laborer full time beginning July 8, 2008 through February 4, 2010 when he was discharged.

The claimant sustained a work-related injury to his shoulder which resulted in surgery to his shoulder and permanent lifting restrictions. On September 25, 2009 the claimant's treating physician imposed permanent lifting restrictions on the claimant; including no lifting over 40 pounds ever. After the claimant received his permanent work restrictions and returned to work, the employer met with the claimant and counseled him on more than one occasion on how to comply with his lifting restrictions and that he was never to lift over 40 pounds. The claimant was specifically instructed that he was not to violate his work restrictions in order to insure his own health and safety and to avoid any further workers' compensation liability for the employer. The claimant was told that if he did not know how much a box weighed, if for instance it was not labeled, he was not to lift the box but was to get a supervisor or another team member to help him so that he would not reinjure himself. There was always a supervisor or team member available to help him comply with his work restrictions; he needed only to ask for help. The claimant admits that the employer had a policy of "never too busy for safety" and that safety was constantly preached as the number one concern for team members (employees) while working. The claimant was never punished or reprimanded for asking for help to comply with his work restrictions.

On February 4, 2010 the claimant lifted multiple boxes each weighing just over 64 pounds, and then reported to his supervisor that he thought he had injured himself. The employer began an investigation immediately after the claimant's report of injury. During the investigation Mr. Rankin never promised the claimant that he would not be discharged. The claimant was suspended during the investigation and the employer discovered that the boxes, each containing floor tiles, weighed well over 40 pounds. The boxes were not labeled as to their weight. When the claimant was asked why he had not asked for help before lifting the boxes he offered that he was in a hurry to get the job done. When the claimant lifted the first box, he should have known then that it was well over 40 pounds and not continued to lift the additional boxes without help from a supervisor or team member.

The claimant had been disciplined for previous safety violations, including running into other forklifts and backing into other forklifts. On November 19, 2009, he was suspended for three days for a fork lift accident and on October 2, 2009 he was given a written warning. Additional fork lift accidents happened in September 2009. The claimant had been given a copy of the employer's handbook and safety regulations. He had been counseled many times about the necessity of his compliance with his work restrictions.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The **employer** is obligated to accommodate work restrictions imposed by a treating physician when those restrictions arise from a work related injury. Likewise **employees** are required to follow those restrictions in order to avoid additional injury and to help the employer avoid additional workers' compensation liability. The claimant admits he had been told that safety was a priority and that he was never to be too busy to comply with safety regulations. The claimant knew the employer enforced safety regulations and took them seriously as he had been written up and suspended for previous safety violations. The administrative law judge is persuaded that the claimant had been trained on how to deal with boxes that were not labeled with their weight. He was to ask for help. The claimant should not have lifted the first box without help, as it was not labeled with a weight. Once the claimant lifted the first box on February 4, he should have known then that it was well over 40 pounds and stopped and asked for assistance with the others. He did not. Claimant's repeated failure to follow the safety rules and his work restrictions in the performance of his job duties after having been warned is evidence of carelessness to such a degree of recurrence as to rise to the level of disqualifying job related misconduct. Benefits are denied.

DECISION:

The February 25, 2010 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

_____
Teresa K. Hillary
Administrative Law Judge

_____
Decision Dated and Mailed

tkh/pjs