

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHANE BROWN

Claimant

AMERICOLD LOGISTICS LLC

Employer

APPEAL NO: 13A-UI-10173-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/28/13

Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 29, 2013, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 2, 2013. The claimant participated in the hearing. Bill Schivers, Operations Manager, participated in the hearing on behalf of the employer.

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 lift truck operator for Americold Logistics from October 25, 2012 to July 30, 2013. He was discharged for exceeding the allowed number of four points regarding rules and expectations within a rolling calendar year.

On March 16, 2013, the claimant received a verbal warning in writing and one point for failing to report an accident after he shut a door on another employee. The claimant stated he did not think he had to complete a report because his supervisor and the safety coordinator were there but under the employer's policy he was required to submit an accident report.

On March 18, 2013, the claimant received a written warning and one point for violating the door policy. The operator is the only one who can open or close the freezer door but the claimant closed the door while an operator was inside the freezer.

On April 29, 2013, the claimant received a written warning and one point after he was told to load out a pallet. The overhead door to the trailer was open and the claimant assumed the truck had been chocked and locked, a required safety measure lift truck operators are expected to perform to lock the brakes and prevent the truck from moving. Consequently, the claimant drove the pallet jack off the dock pallet slate which extends into the trailers and the pallet jack

got stuck and product fell to the ground. The employer had to use another piece of equipment to pull the pallet jack back into the building.

On July 29, 2013, the claimant loaded a truck with five incorrect product pallets. The claimant indicated he checked and loaded the correct product but he did not do so because he trusted the co-worker who checks that the product is correct before it reaches the claimant and his co-worker rarely made mistakes. The claimant admits he did not check the last six to eight pallets. When the customer received the wrong product it notified the employer who investigated the incident. The claimant was responsible for verifying every pallet placed on the truck by lot number and product code. He was required to circle the information on the load documentation, initialing that he checked that the product was correct, and turn the paperwork into his supervisor. Consequently, the employer issued the claimant another point, which was his fourth since March 16, 2013, and terminated his employment July 30, 2013, for exceeding the allowed number of performance/work rules/expectation violations allowed.

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 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 claimant accumulated four policy violation points related to safety between March 16 and July 29, 2013. While the claimant only takes responsibility for the final incident and makes excuses for the other three violations, he knew or should have known he had to report an accident, could not close a freezer door he did not open, and had to lock and chalk trucks before loading out pallets. All three incidents were safety-related violations and those policies are in place to protect all employees. The final situation occurred because the claimant indicated on the paperwork he checked each pallet to confirm it contained the correct product, when actually he admitted he did not do so, which resulted in the customer receiving the wrong product and contacting the employer.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The August 29, 2013, reference 02, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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