

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ARNOLD M VALLEY
Claimant

APPEAL 19A-UI-09587-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXIDE TECHNOLOGIES
Employer

**OC: 12/09/18
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the November 25, 2019 (reference 03) unemployment insurance decision that allowed unemployment insurance benefits to the claimant based upon his discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on January 2, 2020. The claimant, Arnold M. Valley, participated personally. Denise Valley participated as a witness for the claimant. The employer, Exide Technologies, participated through witnesses Micah Berger and Laura Scharosch. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time material handler from January 28, 2019 until his employment ended on October 30, 2019. Claimant's job duties included moving materials around in the warehouse using a forklift. Denise Lickiss was claimant's immediate supervisor.

On October 25, 2019, claimant was operating his forklift with the masts up and hit a doorway. This caused damage to the employer's property. The claimant had been helping a co-worker and moved backwards to allow the co-worker room to get through. When he attempted to go forward, he had forgotten to use the manual switch to lower the forklift masts. He hit the doorway when the masts were up. Claimant could not see that the masts were up and there is no mechanism on the forklift that alerts a driver that the masts are up. Claimant knew that he needed to put the masts down when operating the forklift but had forgotten to do so. Claimant returned to work for his normal shifts on October 28 and 29, 2019. He was discharged on

October 30, 2019 for this accident. Claimant had no previous discipline during the course of his employment.

Claimant filed an original claim for unemployment insurance benefits with an effective date of December 9, 2018. He filed an additional claim for benefits with an effective date of October 27, 2019 during that claim year. He filed six weekly-continued claims for benefits until his benefit year expired on December 8, 2019. He filed another claim for benefits in a subsequent benefit year effective December 8, 2019. He has filed three weekly-continued claims for benefits from December 8, 2019 through December 28, 2019. Claimant has received a total of \$3,698.00 in benefits during his two claim years following his separation from employment with this employer. The employer did not participate by telephone in the fact-finding interview and did not provide any written documentation about the final incident or specific policy that was allegedly violated by the claimant in its statement of protest.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

As a preliminary matter, I find that the Claimant did not quit. Claimant was discharged from employment.

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(4) provides:

Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r. 871-24.32(8) provides:

Past acts of misconduct. 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.

The employer has the burden of proof in establishing disqualifying job misconduct. Iowa Code § 96.6(2); *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The misconduct must be "substantial." *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000) (citation omitted). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. *Id.* (citation omitted). Mere negligence is not sufficient. *Id.* at 666.

When the conduct is based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Negligence does not constitute misconduct unless **recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests.** *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Further, poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated 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." *Greenwell v. Emp't Appeal Bd.*, 879 N.W.2d 222, 228 (Iowa Ct.App. 2016)(citing Iowa Admin. Code r. 871-24.32(1)a).

There was no credible evidence presented that the claimant's actions on October 25, 2019 consisted of a **deliberate** act or omission which constituted a material breach of his duties and obligations as an employee, or that these actions rose to the level of carelessness or negligence of such degree of **recurrence** as to manifest equal culpability, wrongful intent or evil design. As such, the employer has failed to meet its burden of proof in establishing disqualifying job misconduct. Benefits are allowed, provided the claimant is otherwise eligible. The overpayment issue is moot. The employer's account may be charged for benefits paid.

DECISION:

The November 25, 2019 (reference 03) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/scn