

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DREW R DUNCAN**  
Claimant

**APPEAL NO. 110-UI-01230-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KRAFT PIZZA CO**  
Employer

**OC: 10/03/10  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated October 26, 2010, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on February 28, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. James Terronez participated in the hearing on behalf of the employer with a witness, Julie Stokes.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time as a car checker for the employer from July 9, 2008, to September 18, 2010.

On September 7, 2010, the production supervisor, James Terronez, discovered the right tine on a fork truck had been damaged. Terronez determined the damage was likely done on September 4. The claimant and three other workers could have used the fork truck on September 4. When Terronez questioned the claimant about damage to the fork truck, the claimant truthfully answered that he had damaged the tine on the fork truck back in August and had prepared a repair order to make sure it was reported. He did not report any damage to the tine in September because it was not damaged while he used it and he was unaware of any damage. Terronez continued to investigate and questioned a mechanic in mid-September who claimed to have fixed the tine on the fork truck on September 4 at the claimant's insistence. The claimant was questioned about the damage to the fork truck again on September 16 and he continued to insist he did not know anything about any damage done to the fork truck on September 4.

The employer suspended the claimant on September 18 and discharged him on September 30, 2010, for damaging the fork truck and being dishonest about it when he was questioned regarding the incident.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant testified credibly that he did not know anything about the fork truck being damaged on September 4. The employer's evidence consisted of hearsay testimony from person who did not testify at the hearing. The claimant testimony outweighs the employer's evidence. The employer, therefore, have failed to meet its burden of proving misconduct.

**DECISION:**

The unemployment insurance decision dated October 26, 2010, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/css