

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHANE N UNDERDAHL
Claimant

APPEAL NO. 13A-UI-02253-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCHENKER LOGISTICS INC
Employer

**OC: 01/20/13
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated February 18, 2013, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on March 25 2013. Claimant participated. The employer participated by Ms. Nicki Brick, Human Resource Manager.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct in connection with his work.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Shane Underdahl was employed by Schenker Logistics Inc. most recently from August 6, 2012 until January 16, 2013 when he was discharged from employment. Mr. Underdahl worked as a full-time forklift operator and was paid by the hour. His immediate supervisor was Suzanna Smith.

Mr. Underdahl was discharged on January 16, 2013 after he became unreasonably upset after receiving a warning for his conduct during an incident that had taken place on Friday, January 11, 2013.

The employer believed that Mr. Underdahl had acted inappropriately on January 11 by disputing work directives and using inappropriate language in the presence of his supervisor and the company's dock coordinator.

On January 16 Mr. Underdahl had been given the warning for his previous conduct and had gone to resume his duties as a forklift driver. Approximately one hour later the claimant returned to the office, re-read the warning and then ripped the warning document into "shreds." The employer considered Mr. Underdahl's conduct to be insubordinate. The claimant's display of anger of January 16, 2013 in ripping up the warning form, was considered to be an additional incident of the claimant failing to control his temper, the subject of the warning that had just

been issued to him. A decision was therefore made to terminate Mr. Underdahl from his employment with the company based upon his repeated failure to control his emotions.

It is the claimant's position that he does not "recall" the incident that caused his discharge on January 16, 2013.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient to establish misconduct in connection with the claimant's employment. It is.

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 employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In this matter the employer's witness testified with specificity regarding the incident on January 11, 2013 that caused Schenker Logistics to issue Mr. Underdahl a written warning on January 16, 2013. The employer's witness then testified with specificity about Mr. Underdahl's conduct in the company offices. The witness' testimony, based upon business records that were kept in the ordinary course of business by the company, was that Mr. Underdahl had again

become unreasonably angry and that the claimant had torn up a written warning that had been served upon him by the company one hour previously that day. Ms. Brick further testified off company records that the claimant had made statements to the affect that the company might need to call security guards to escort him off the premises. In contrast, Mr. Underdahl participated personally and testified that he did not "recall" tearing up the warning or the incident on January 16, 2013.

Hearsay is admissible in administrative proceedings. The administrative law judge finds Ms. Brick's hearsay testimony taken from the company's investigation of the matter to be more credible than the claimant's general denial.

The administrative law judge concludes that the claimant's conduct in tearing up the written warning that had been served upon him and the claimant's display of an angry and threatening demeanor showed a willful disregard for the employer's interests and reasonable standards of behavior that it had a right to expect of its employees under the provisions of the Employment Security Law. The claimant's discharge was therefore for misconduct in connection with his work. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated February 18, 2013, 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 and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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