

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES WATSON
Claimant

APPEAL NO: 12A-UI-03009-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

WORKSOURCE INC
Employer

OC: 01-22-12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 14, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 10, 2012. The claimant participated in the hearing. Lorie Streeter, Account 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 load shed/yard man for Worksource last assigned to Siemens from February 21, 2011 to May 3, 2011. His assignment was ended at the client's request because it was concerned about the claimant's mechanical abilities as it stated he had difficulty mastering lifts to access the blades for blade securing. The client indicated it was having issues with the claimant hitting objects in the lifts and stated it had concerns about property and personal damage. The client stated the claimant was not aware of his surroundings and the tail swing when turning corners in the forklift. There were reports the claimant came close to hitting a blade tip with the rear of the forklift because he was not aware of the tail swing. The client also said the claimant would start one project and move to another without finishing the one he started. The crew was nervous and had to recheck his work constantly to insure the correct processes are completed before the blade is shipped. The client stated it needed an employee whose work did not have to be constantly rechecked. The employer received an email from the client March 4, 2011, about the claimant's performance and called him to speak to him about the above stated issues. On May 3, 2011, the client ended the claimant's assignment. The claimant had "no idea" his job was in jeopardy and completely disagrees with the characterization of his performance as relayed to the employer by the client. He was never told he was not performing to the employer's satisfaction except for the March 4, 2011, phone call stating he was standing around and failing to take the initiative to keep himself busy as well as being aware of his surroundings to insure safety, both of which he disagrees. He did not receive any written warnings about his job performance.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979). While the employer testified the claimant did not meet the employer's performance or safety expectations, the claimant credibly denied the allegations made against him and testified he was consistently told he was doing a good job. The claimant's first hand testimony about the situation is more persuasive than the employer's second hand testimony. Inasmuch as the claimant did attempt to perform the job to the best of his ability but was unable to meet the

employer's expectations, no intentional misconduct has been established, as is the employer's burden of proof. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are allowed.

DECISION:

The March 14, 2012, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css