

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALAN W RIPPENTROP
Claimant

APPEAL NO: 13A-UI-10920-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

VAN DIEST SUPPLY CO
Employer

**OC: 09/01/13
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
871 IAC 24.32(8) – Current Act

STATEMENT OF THE CASE:

The employer appealed a department decision dated September 23, 2013, reference 01, that held the claimant was not discharged for misconduct on August 31, 2013, and benefits are allowed. A telephone hearing was held on October 17, 2013. The claimant participated. Carolyn Cross, Personnel Manager, Lee Trask, Manufacturing VP, and Mark Davis, Director Support Services, participated for the employer. Employer Exhibit One was received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on September 9, 1992, and last worked for the employer as a full-time Shipping/Receiving Operator on August 31, 2013. He received the employer policies and procedures.

The employer issued claimant a written discipline on November 20, 2012 for shipping error. Claimant failed to verify shipping product numbers. The employer issued claimant a written discipline for a fork lift accident product spill on May 9, 2013. The employer put claimant on notice that a further incident could lead to employment termination.

On August 21, 2013 claimant inspected a rail tanker car that was later transported by the Canadian railroad. The railroad reported a hazardous material leak from the car to the employer on August 28. The employer was fined \$5,000 for the leak and it spent another \$1,600 on the incident.

Photographs showed the top of the rail car with an open valve and a bottom valve where the leak occurred showed excessive threads. The bottom valve was tightened from seven to three thread exposure that stopped the leak. The employer terminated claimant for failing to properly verify and inspect the rail car that led to the leak of hazardous material on August 31 in light of the prior discipline.

Claimant admits he inspected the rail car. He looked at the top of the car and does not recall any open valve. He surmises someone might have manipulated the valve due to a wrench that is not the employer's left near it. He did not observe any rail car leak during his inspection, he recalls tightening the lower valve, placing the seal, and he does not believe there was any seven thread exposure.

The employer participated in department fact finding.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.32(8) provides:

(8) 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 administrative law judge concludes the employer has failed to establish that the claimant was discharged for a current act of misconduct in connection with employment on August 31, 2013. The employer must establish the most recent relied upon for termination is misconduct.

Claimant inspected the rail car on August 21 that was found leaking hazardous material at a distant location on August 28. While a loosely tightened lower valve and open top valve appears to be the reason, the time and distance traveled from inspection to leak are circumstances that favor claimant in his denial that he is the responsible party. No one can refute he viewed the top of the car and saw no open valve, and even the employer admits the wrench pictured is not theirs. The wrench is suggestive evidence that someone else was manipulating the valves and not the claimant. No current act of misconduct is established for this incident and thus job disqualifying misconduct is not established.

DECISION:

The department decision dated September 23, 2013, reference 01, is affirmed. The claimant was not discharged for a current act of misconduct on August 31, 2013. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs