

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM C HUTCHINSON
Claimant

APPEAL NO: 11A-UI-16063-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCHENKER LOGISTICS INC
Employer

**OC: 11/13/11
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's December 12, 2011 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing. Nicki Brick, the human resource manager, appeared on the employer's behalf. During the hearing, Employer Exhibit One was offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in September 2005. He worked as a full-time case pick operator.

On November 10, 2011, the operations manager talked to the claimant about safety at work. The employer asked the claimant to make sure he followed safety procedures. The claimant's record indicated he had been in several safety incidents since October 2007. He received final written warnings in January and early December 2010. After the final written warnings, the employer talked to the claimant about incidents that occurred in January, March, June and July 2011. In June 2011, the claimant, while on a forklift, pulled out in front of a sit-down in the express aisle. (Employer Exhibit One.)

The next day at work, an employee called claimant's name. The claimant responded by walking across an aisle. The claimant did not think to look to see if anyone was coming on a forklift. A forklift driver was coming toward the claimant's direction, but was able to stop just a few feet in front of the claimant. If the forklift driver had not been able to stop, the claimant would have been injured.

On November 16, 2011, the employer discharged the claimant for again violating the employer's safety procedures when he failed to look to make sure he could safely walk across an aisle.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant acknowledged his safety record was not the best. After July 7, 2011, the claimant did not have any safety violations until November 11. On November 11, the claimant was careless or negligent when he responded to an employee who called his name by walking across an aisle without looking to see if anyone was coming. The claimant was not thinking. He was responding to another employee. Yes, the claimant should have looked both ways before he started walking across the aisle. He did not intentionally fail to take reasonable safety measures on November 11. The claimant was negligent on November 11, but the facts do not establish that he was negligent to the extent that he committed work-connected misconduct. Therefore, as of November 13, 2011, the claimant is qualified to receive benefits.

DECISION:

The representative's December 12, 2011 determination (reference 01) is reversed. The employer discharged the claimant for justifiable business reasons, but the claimant did not commit work-connected misconduct. As of November 13, 2011, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw