

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BENJAMIN J KULPER
Claimant

APPEAL NO. 09A-UI-01546-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GUARDIAN INDUSTRIES CORP
Employer

**OC: 01/04/09 R: 04
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Guardian Industries Corporation filed an appeal from a representative's decision dated January 29, 2009, reference 01, which held that no disqualification would be imposed regarding Benjamin Kulper's separation from employment. After due notice was issued, a hearing was held by telephone on February 19, 2009. Mr. Kulper participated personally. The employer participated by Kirsten Regenwether, Human Resource Coordinator. Exhibits One, Two, and Three were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. Kulper was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Kulper was employed by Guardian Industries Corporation from May 2, 2005 until January 9, 2009. He was employed full time as a production worker. He was operating a forklift on January 6 when he asked a coworker, Richard Schnoor, to get on the forklift to balance the load. Mr. Kulper drove the forklift approximately 50 yards with Mr. Schnoor on board. The employer's policy prohibits having someone on the forklift unless the individual is in a protective guardrail platform with the ability to shut off power if necessary. The forklift being used by Mr. Kulper did not have the platform required by the policy.

Both Mr. Kulper and Mr. Schnoor were aware of the employer's policy. Mr. Kulper had Mr. Schnoor ride on the forklift rather than have the materials reloaded so that it was balanced. Both parties were discharged as a result of the incident. The only other incident Mr. Kulper had involving the forklift was on December 16, 2008 when a strap broke because it was not tightened sufficiently.

REASONING AND CONCLUSIONS OF LAW:

Mr. Kulper was discharged from employment. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Kulper was discharged for violating a known work rule by having a coworker riding on the forklift without a protective guardrail platform. This was the one and only occasion on which he had violated the policy.

It is noteworthy that Mr. Kulper and Mr. Schnoor were not engaging in horseplay on the forklift. They were attempting to work more efficiently by not having to reload the forklift so that it was balanced. Given his length of employment and the fact that this was the only incident of this nature, the administrative law judge is inclined to characterize it as an isolated instance of poor judgment. Conduct so characterized is not considered misconduct within the meaning of the law. See 871 IAC 24.32(1). While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated January 29, 2009, reference 01, is hereby affirmed. Mr. Kulper was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs