

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JORDAN M STRAIT
Claimant

APPEAL NO. 11A-UI-05554-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PANAMA TRANSFER INC
Employer

**OC: 03/20/11
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated April 19, 2011, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on May 19, 2011. The claimant participated personally. Participating as a witness for the claimant was Mr. Neal Breshcia, Company Driver/Dockworker. Although duly notified, the employer did not respond to the notice of hearing and did not participate.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Jordan Strait was employed by Panama Transfer from January 2008 until March 21, 2011 when he was discharged from employment. Mr. Strait worked as a full-time dock worker and was paid by the hour. His immediate supervisor was Chad Ellingson.

The claimant was discharged following two incidents in which damage occurred to property being transported by Panama Transfer. On March 21, Mr. Strait unknowingly allowed the forklift that he was operating to roll forward puncturing a 250 gallon "tote" causing approximately 50 gallons of the product contained in the tote to be lost. Later that shift Mr. Strait upset a double-stacked pallet. During the loading process the wheels on the forklift that Mr. Strait was operating slipped to the side causing the load to become dislodged. Because the claimant had received a previous warning from the company he was discharged from employment.

Mr. Strait was attempting to perform his duties to the best of his ability. The claimant was required to work long hours and was required to perform a number of duties simultaneously. The claimant's attention to other required duties caused him to be distracted and resulted in the damage to property consigned through Panama Transfer Company.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is not.

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 establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based upon carelessness the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa 1988).

In this matter the claimant testified that he was performing his duties to the best of his ability and that he was distracted by a requirement that he perform numerous functions simultaneously and because he had been required to work long hours. Mr. Strait believes that he had been previously warned by a new supervisor for no justifiable reason. The claimant also believes that

his new supervisor did not like him and was instrumental in causing the claimant's discharge from employment. There being no evidence to the contrary, the administrative law judge must conclude that the employer has not sustained its burden of proof in establishing intentional misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated April 19, 2011, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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