

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONALD L AKERS
Claimant

APPEAL NO. 09A-UI-03526-E2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PINNACLE FOODS GROUP LLC
Employer

OC: 01/25/09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Donald Akers, claimant, filed an appeal from a decision of a representative dated March 3, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held at 2:00 p.m. on March 30, 2009. Employer participated by Wilda Lampe, human resources specialist and Bill Kenel, packing team manager. Claimant failed to respond to the hearing notice and did not participate. The claimant's union representative, Matthew Horn called at 2:45 p.m. and asked to provide testimony or that the hearing be reopen. The claimant provided the Appeals Section the wrong telephone number for the phone hearing. The claimant did not call in as per the instructions on the hearing notice when he was not called within five minutes of the scheduled conference call hearing. The claimant has not shown good cause to reopen the hearing. Exhibit 1 was admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on January 28, 2009. He was discharged on February 6, 2009 for violation of safety rules. On January 28, 2009, the claimant was standing on the forks of a fork truck six feet in the air without any safety harness. The employer has a rule which was provided to the claimant which prohibits unsafe conduct. The claimant had been warned and suspended from January 23 through January 26 about unsafe conduct and striking another employee on January 22, 2009. The January 22 incident involved shoving a pallet into the leg of a co-worker.

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 gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct.

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning safety. Claimant was warned about unsafe conduct in the work place. The occurrence of two incidents so close in time shows that the claimant's conduct was not an isolated instance of negligence but a deliberate disregard for reasonable safety rules.

The last incident, which brought about the discharge, is a last act of misconduct. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated March 3, 2009, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

James Elliott
Administrative Law Judge

Decision Dated and Mailed

jfe/pjs