

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROGER A BACKES

Claimant

ATTACHMENT TECHNOLOGIES INC

Employer

APPEAL NO: 13A-UI-07709-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/02/13

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant appealed a department decision dated June 18, 2013 reference 01 that held he was discharged for misconduct on May 30, 2013, and benefits are denied. A telephone hearing was held on August 5, 2013. The claimant participated. Brent Nimitz, HR Manager, and Chad Becker, Supervisor, participated for the employer. Employer Exhibit One was received as evidence.

ISSUE:

Whether 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 March 14, 2005, and last worked for the employer as a full-time welder/fitter on May 30, 2013. The employer provided claimant with its policy in an employee handbook. The policy provides an employee may be terminated for willful violation of safety policy.

The employer received a report claimant allowed a passenger to ride on his fork lift. The employer confronted claimant who admitted it. Claimant had been trained on the fork lift and he acknowledged that it was a prohibited practice to allow a passenger to ride on it.

The employer considers allowing a passenger to ride on a fork lift to be dangerous because it could lead to serious injury or death. The employer terminated claimant on May 30 for willful violation of the employer safety policy.

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.

The administrative law judge concludes employer established claimant was discharged for misconduct on May 30, 2013 for violation of safety policy. Claimant contends this was an isolated instance of poor judgment that is not misconduct.

Since claimant had fork lift training with an acknowledgment that having a passenger is a prohibited practice, his violation on May 29 is willful. The employer policy permits termination for this offense. It constitutes job disqualifying misconduct for these reasons.

DECISION:

The department decision dated June 18, 2013, reference 01, is affirmed. The claimant was discharged for misconduct on May 30, 2013. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs