

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RONALD A BERGDALE
Claimant

APPEAL NO. 12A-UI-00591-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

AADG INC
Employer

**OC: 12/04/11
Claimant: Appellant (2)**

Section 96.5-2-A – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated January 10, 2012, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on February 15, 2012. Claimant participated. The claimant was represented by Evelyn Ocheltree, Attorney at Law. The employer responded to the hearing notice and provided the names and a telephone number for its representatives. When that number was dialed, voice mail picked up. A detailed message was left for the employer on how to participate in the hearing. The employer did not call prior to the closing of the record. The record consists of the testimony of Ronald Bergdale.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The employer builds frames and doors. The claimant was hired on December 13, 1973. He drove a forklift and moved pallets. The claimant was terminated on December 9, 2011.

The claimant was terminated because the employer believed he struck another employee twice with the pallet he was carrying on the forklift. The claimant does not believe that he hit the other employee. If he did hit the other employee, it was an accident. The other employee was not injured. The claimant has never been given a warning or reprimand in the past for a safety violation.

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The legal definition of misconduct excludes errors of judgment or discretion or acts of simple negligence in isolated situations. The employer has the burden of proof to show misconduct.

There is no evidence of misconduct in this record. The claimant was terminated because the employer believed he hit another employee twice with a pallet. The claimant was driving a forklift and had the pallet on the forks. The claimant did see the other employee and honked his horn. He does not know if he hit the employee or not. He thought he had plenty of room. The other employee was not injured. The employer did not participate in the hearing and it is unknown why the employer deemed what the claimant did to be a terminable offense.

Since there is no evidence of misconduct, no disqualification will be imposed. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated January 10, 2012, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css