

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TODD D ASKVIK
Claimant

APPEAL NO. 06A-UI-10594-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCED DRAINAGE SYSTEMS INC
Employer

**OC: 12-04-05 R: 01
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from the decision of a representative dated October 19, 2006, reference 04, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 14, 2006. Although duly notified there was no participation by the claimant. The employer participated by Mr. Mitch Kirkland, Plant Manager and Ms. Tobie Solis, Plant Accountant.

ISSUES:

The issues in this matter are whether the claimant was discharged for misconduct in connection with the work and whether the claimant is overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from March 22, 2005 until September 13, 2006 when he was discharged from unemployment. Mr. Askvig worked as a material handler on a full-time basis. His immediate supervisor was Michael Hersh.

The claimant was discharged for repeated safety violations. Mr. Askvig had been trained in the operation of the forklift that he was assigned to and had passed a company safety course. The claimant had demonstrated the ability to safely and adequately perform the duties of his job as a forklift operator. Mr. Askvig was discharged after amassing a total of five accidents that the employer considered to be due to negligence or carelessness on the part of Mr. Askvig. The claimant was issued a warning each time regarding his failure to safely operate company vehicles or equipment. The final incident occurred when the claimant was not paying attention and rammed his forklift into another parked forklift causing substantial damage. Witnesses corroborated that Mr. Askvig was at fault and a decision was made to terminate the claimant from employment based upon his number of accidents and warnings.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds the evidence establishes that the claimant was discharged for misconduct in connection with the work.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The evidence in the record establishes that Mr. Askvig had demonstrated the ability to adequately perform the duties of his job and had passed company safety courses. The evidence further establishes the claimant had received numerous warnings from the employer for failure to follow safety rules. The claimant was discharged when he rammed another forklift. Witnesses who were present at the time verified that Mr. Askvig was not watching the direction of travel of the forklift that he was operating. The claimant's negligence or carelessness caused substantial damage to company equipment.

Based upon the additional evidence available at the time of hearing, the administrative law judge finds that the employer has sustained its burden of proof in showing the claimant's discharge took place under disqualifying conditions.

The administrative law judge holds the claimant is overpaid unemployment insurance benefits in the amount of \$888.46 pursuant to Iowa Code section 96.3-7 because a decision has determined the claimant ineligible to receive benefits due to a discharge for misconduct in connection with the work.

Since the claimant has been disqualified for the receipt of unemployment insurance benefits, the claim shall be locked until the claimant has requalified or is otherwise eligible.

DECISION:

The decision of the fact finder dated October 19, 2006, reference 04, is reversed. Unemployment insurance benefits shall be withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. The claimant is overpaid unemployment insurance benefits in the amount of \$888.46.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs