

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH R KIMSEY

Claimant

APPEAL NO: 12A-UI-01806-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

COUNCIL BLUFFS PAYROLL CO

Employer

OC: 12/25/11

Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

The employer appealed a department decision dated February 9, 2012, reference 02, that held the claimant was not discharged for misconduct on December 19, 2011, and benefits are allowed. A telephone hearing was held on March 26, 2012. The claimant participated. Patricia Rodriguez-Spears, HR representative, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on December 14, 2009, and last worked for the employer as a full-time forklift driver on December 19, 2011. He received the employer policies regarding its code of conduct. A safety violation is considered a major infraction. Claimant's employment is covered by a union contract/representation.

The claimant received a written warning for a hostile work environment for an incident on January 6, 2011. He did not dispute it because he acknowledged he used poor language. Claimant was suspended for a safety violation on July 14 involving the operation of his forklift, and he was told that another infraction could lead to employment termination.

On December 8 claimant got involved in a verbal altercation with a co-worker. A supervisor told him to cool off and go home. On the way out, he punched a forklift that caused a minor injury to his hand. The employer investigated the incident and received written statements about what occurred. It discharged claimant for the recent safety violation in light of progressive discipline.

Claimant has been receiving unemployment benefits on his current claim.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 the employer has established claimant was discharged for misconduct in connection with employment on December 19, 2011.

The claimant was the subject of progressive discipline from a written warning to suspension that put him on notice his job was in jeopardy. The most recent act of striking his forklift with his hand constitutes a safety violation that is job disqualifying misconduct in light of the prior discipline.

DECISION:

The department decision dated February 9, 2012, reference 02, is reversed. The claimant was discharged for misconduct on December 19, 2011.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs