

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CRAIG W WARNER SR
Claimant

APPEAL NO. 14A-UI-09005-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PINERIDGE FARMS LLC
FORESURE TRANSPORT**
Employer

**OC: 08/10/14
Claimant: Appellant (2)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Craig Warner filed a timely appeal from the August 27, 2014, reference 02, decision that disqualified him for benefits. After due notice was issued, a hearing was held on September 18, 2014. Mr. Warner participated. John Anderson represented the employer. The hearing in this matter was consolidated with hearing in Appeal Number 14A-UI-09004-JTT.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Craig Warner was employed as full-time forklift operator until August 9, 2014, when the employer discharged him for causing injury to a coworker on August 4, 2014. Mr. Warner had operated the stand-up forklift for a decade. On August 4, 2014, Mr. Warner was backing his stand-up forklift in the employer's facility, did not note a pallet behind him or the coworker next to the pallet, and collided with both with substantial force. The coworker was injured when she was pinned against the pallet. Mr. Warner realized his error in backing when the coworker screamed. Mr. Warner pulled the forklift forward, checked on the wellbeing of the coworker and brought the matter to the attention of the employer. Mr. Warner was angry and upset with himself in connection with the incident. Mr. Warner advised the employer that he wished to go work in another area of the facility where he would no longer operate a stand-up forklift. Earlier in the shift, Mr. Warner had placed the pallet in question in the spot where it was still resting when he later collided with the pallet.

In making the decision to discharge Mr. Warner from the employment, the employer considered an incident from May 6, 2013. On that date, Mr. Warner was backing his stand-up forklift in the employer's facility, did not note a pallet behind him, and collided with the pallet. A coworker, the

same coworker injured on August 4, 2014, was standing on the opposite side of the pallet. When Mr. Warner collided with the pallet, the pallet was pushed into the female coworker. In that instance, the coworker suffered minor injury. In that earlier instance, Mr. Warner was trying to operate in a very limited space with several pallets in the vicinity.

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge

considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The evidence in the record establishes that Mr. Warner operated the stand-up forklift in a negligent manner on August 4, 2014. Mr. Warner failed to pay sufficient attention to objects and people in the vicinity of his forklift while he was backing the forklift. Ms. Warner's negligence resulted in an employee being injured. Fifteen months earlier, Mr. Warner had operated the stand-up forklift in a similarly negligent manner with less serious consequences. While these two incidents created an unsafe work environment, and could have been avoided if Mr. Warner had paid more careful attention, the evidence does not indicate that Mr. Warner willfully or wantonly disregarded the interests of the employer. These two incidents, as bad as they were, occurred 15 months apart. These two incidents stand in contrast to Mr. Warner's otherwise safe operation of the stand-up forklift over the course of a decade and during the 15 months between the two incidents. The evidence indicates that Mr. Warner did care about performing his work in a conscientious manner, but failed to do so on these two isolated occasions. These two incidents are not sufficient to establish a pattern of conduct indicating willful or wanton disregard of the employer's interests. While it was within the employer's discretion to discharge Mr. Warner from the employment, the evidence does not establish misconduct in connection with the employment that would disqualify Mr. Warner for unemployment insurance benefits.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Warner was discharged for no disqualifying reason. Accordingly, Mr. Warner is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The claims deputy's August 27, 2014, reference 02, decision is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs

