

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUAN F SALGADO

Claimant

APPEAL NO: 13A-UI-08250-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PINERIDGE FARMS LLC
FORESURE TRANSPORT**

Employer

OC: 06/16/13

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Juan F. Salgado (claimant) appealed a representative's July 9, 2013 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Pineridge Farms, L.L.C. (employer). After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was convened on August 20, 2013 and reconvened and concluded on August 26, 2013. The claimant participated in the hearing. John Anderson appeared on the employer's behalf and presented testimony from two other witnesses, Ken Wilson and Michele Morman. Rafael Geronimo served as interpreter. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Affirmed. Benefits denied.

FINDINGS OF FACT:

The claimant started working for the employer on July 6, 2010. He worked full time as a lead person at the employer's pork processing facility. His last day of work was June 19, 2013. The employer discharged him on June 20, 2013. The stated reason for the discharge was a severe safety violation.

The employer's safety procedures specify that only persons who go through training are authorized to operate the forklifts or pallet lifts. These persons are designated by a sticker applied to the employee's hard hat. The claimant was on notice that only authorized employees could operate this equipment.

On June 19 the claimant, who normally worked on the second floor of the operation, was doing cross training on the first floor. At one point he asked an authorized employee to move a combo of meat, but the employee indicated he was going on break and would be back in 15 minutes. Even though no manager or supervisor had told the claimant that he could not allow the line to pause to wait for movement of the combo, the claimant determined that he should not wait the 15 minutes, or even as long as it would take for another authorized employee to come from another floor. He believed that he was able to operate the forklift/pallet lift; while the employer's supervisors and managers had not observed the claimant ever operating a forklift/pallet lift on the second floor, the claimant asserted that he had operated a forklift/pallet lift on the second floor in the past. He therefore attempted to operate the forklift/pallet lift on the first floor. He discovered that it operated differently than he had expected; he lost control and struck another employee, causing her serious injury requiring a hospital visit and several days off work.

As a result of this serious safety violation, the employer discharged the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's unauthorized operation of the forklift/pallet lift causing injury to another employee shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's July 9, 2013 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of June 19, 2013. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs