

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVE D WATTS
Claimant

APPEAL NO. 08A-UI-05561-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCHENKER LOGISTICS INC
Employer

**OC: 05/18/08 R: 04
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Steve D. Watts filed a timely appeal from an unemployment insurance decision dated June 11, 2008, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held July 1, 2008 with Mr. Watts participating. He was represented by Jay Schweitzer, Attorney at Law; and Shelley Christensen testified on his behalf. Senior Human Resources Specialist John Phipps participated for the employer, Schenker Logistics, Inc.

ISSUE:

Was the claimant discharged for misconduct in connection with his employment?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Steve D. Watts was employed by Schenker Logistics, Inc. from September 26, 2005 until he was discharged May 21, 2008. He last worked as a forklift operator. The sole incident leading to his discharge occurred on May 20, 2008. On that date Mr. Watts lifted co-worker Shelley Christensen about two feet off the ground as she stood on the forks of Mr. Watts' forklift. This was not an instance of horseplay. An air hose had gotten lodged high enough off the ground that Ms. Christensen, herself a forklift operator, could not reach it from the ground. It was necessary to dislodge the air hose in order for her to complete her assignment.

In November 2007 Mr. Watts had been re-certified as a forklift operator. The re-certification consisted of lead worker Steve Milliman reading the answers to the test questions to Mr. Watts and the other operators. This was done so quickly that Mr. Watts was unable to read the question and the appropriate answer. In December Mr. Watts observed Mr. Milliman lifting a co-worker on the forks of his (Mr. Milliman's) forklift.

In the past others had lifted co-workers as Mr. Watts did without adverse consequences. On May 20, 2008, however, the general manager and regional manager observed Mr. Watts lifting Ms. Christensen. They insisted that both be discharged.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with his employment. It does not.

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.

The employer has the burden of proof. See Iowa Code section 96.6-2. The employer has not established by a preponderance of the evidence that Mr. Watts knew or reasonably should have known that he would be discharged for lifting a co-worker on the forks of his truck. At worst, the evidence establishes a single incident of poor performance. Moreover, as noted in the findings of fact, it appears that such behavior had been regularly condoned by the employer in the past and that Mr. Watts was discharged only because of the witnesses to the incident. No disqualification may be imposed.

DECISION:

The unemployment insurance decision dated June 11, 2008, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs