

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RANDY SCHMIDT
Claimant

APPEAL NO: 11A-UI-13952-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE HON COMPANY
Employer

**OC: 09-25-11
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 11, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 17, 2011. The claimant participated in the hearing. Sue McDonald, Human Resources Representative; Chuck Shelledy, Distribution Group Leader; Herb Griebe, Distribution Center Manager; and Steve Zaks, Employer Representative, participated in the hearing on behalf of the employer. Employer's Exhibits One through Three were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time distribution support employee for The Hon Company from October 15, 1984 to August 29, 2011. On August 24, 2011, the claimant went to get fuel and backed in between two other forklifts without asking the operators to move them. The two other operators were standing to the side and the claimant called them "lazy motherfuckers." He bumped one of the other fork trucks as he was leaving, after throwing the gas tanks around. The employer determined his actions in backing in between two other forklifts, bumping one as he was leaving and throwing the gas tanks around were reckless and safety risks and that his use of profanity was inappropriate. The incident was reported to the lead man and then to management who, after reviewing the claimant's disciplinary record, terminated his employment August 29, 2011. The claimant received a final written warning June 27, 2011, for inappropriate and threatening behavior toward co-workers after he stated, "anyone coming my way needs to be ducking," which caused his co-workers to believe he possibly had a gun (Employer's Exhibit One). The claimant indicated that while he did make the comment he does not own a gun and was simply expressing frustration about events of the day but did not intend the comment to be threatening. The claimant was placed on suspension and referred to the employer's member assistance program (Employer's Exhibit One). The final written warning said, "Randy, your verbal outbursts are inappropriate, disruptive and contrary to the vision and

values of the organization, and require an immediate correction of your behavior. Further behavior of this type will not be tolerated and will result in further action up to and including termination of employment” (Employer’s Exhibit One). In March 2011 the claimant received a coaching for performance regarding his 2010 performance review and the manner in which he dealt with issues that frustrated him. The claimant received a 2010 performance review January 19, 2011 (Employer’s Exhibit Three). Distribution Group Leader Chuck Shelledy commented that the claimant sometimes focuses “on the negative aspects of issues that arise at work. Try to take a more positive approach to solving the issues that cause you frustration” but also said the claimant had “committed no unsafe acts during this review period (Employer’s Exhibit Three). The claimant admitted during the hearing to having previous verbal outbursts and arguments with other employees and that sometimes when he became frustrated he did not talk to others, would walk away from them or hang up on them. He stated he was more verbal than other employees and would not back down.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an

unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). While the claimant's comment to his co-workers August 24, 2011, was inappropriate, he backed his forklift in between two others to get fuel, tossed the fuel tanks around because he has a problem with his hands, and bumped one of the other forklifts on his way out, none of which caused an accident or injury and although the employer felt his conduct was reckless it did not rise to the level of a safety violation. The claimant had difficulty maintaining a positive attitude and dealing with his frustration as evidenced by his final written warning of June 27, 2011, which referred him to an employee assistance program, his coaching in March 2011, and his 2010 performance review, all of which addressed his inability to deal with frustration in a professional manner. The claimant may have been prone to verbal outbursts but his performance review indicated his performance was fairly good. The question then becomes whether the incidents involving his acting on his frustration and the final incident rise to the level of disqualifying job misconduct. The administrative law judge must conclude it does not. The claimant let the frustrations of the job affect him, resulting in verbal outbursts and negativity, which were evident during the final incident August 24, 2011. His actions in backing between two forklifts to get gas, tossing the fuel tanks because of the problems with his hands and bumping one of the other forklifts on his way out on that date were not done in a fast or reckless manner and he did not endanger other employees. The claimant acknowledged commenting that the other two employees present "could at least work" but denied stating they were "lazy motherfuckers." The claimant was most likely a difficult employee who while being a hard worker became easily frustrated and voiced his frustration and disagreement to co-workers, which made him unpopular with co-workers and management alike. Under these circumstances, the administrative law judge cannot conclude that the claimant's actions rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The October 11, 2011, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css