

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JERRY D YOUNG**  
Claimant

**APPEAL NO. 11A-UI-12190-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THEISENS INC**  
Employer

**OC: 08/07/11**  
**Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Jerry Young, filed an appeal from a decision dated September 9, 2011, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on October 11, 2011. The claimant participated on his own behalf and with Judy Lukemeir, Joe Meyer and Ron Bayless. The employer, Theisens, participated by Director of Human Resources Cindy Burdt.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Jerry Young was employed by Theisens from October 6, 1998 until August 12, 2011 as a full-time sales and service associate. The evaluation he received March 11, 2011, notified him he needed to “pay more attention” while he was operating the forklift.

He received a verbal warning June 11, 2011, when he knocked over a pallet of material onto a co-worker. On July 25 and 27, 2011, he received other verbal warnings for damaging product on the pallets he was moving. On July 31, 2011, he received a written warning and three-day suspension for damaging a customer’s vehicle with the forklift he was operating. The warning notified him his job was in jeopardy and any accidents or damage to product in the future must immediately be reported to the manager on duty.

On August 10, 2011, the claimant again damaged material on a pallet and later dumped a load of solar salt in the parking lot. He did not report either incident to the manager on duty, but other employees did. The manager on duty at the time, Kathy Clark, passed the information on to Store Manager John Burmeister, and he interviewed witnesses and talked to Mr. Young. The claimant could not provide any explanation as to why he did not report the accidents as required and he was discharged on August 12, 2011.

**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 claimant had been advised his job was in jeopardy as a result of his carelessness in operating the forklift. He knew he was to be more careful and to report any accidents to the manager on duty. He failed to do either.

While accidents may be expected from time to time the claimant's history of accidents in the six months before he was discharged is excessive. This is more than mere accidents but wanton carelessness to such a degree as to constitute willful misconduct. In addition, his deliberate failure to follow the instructions in the final warning and report the accidents of August 10, 2011, is insubordination. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

**DECISION:**

The representative's decision of September 9, 2011, reference 01, is affirmed. Jerry Young is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs