

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JASON M ELDERS**

Claimant

**APPEAL NO: 10A-UI-00220-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FISHER BUILDING SERVICES**

Employer

**OC: 11/22/09**

**Claimant: Appellant (1)**

Section 96.5-2-a - Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated January 5, 2010, reference 01, that held he was discharged for misconduct on November 22, 2009, and benefits are denied. A telephone hearing was held on February 15, 2010. The claimant participated. Jamie Trausch, Supervisor, and Rob Fischer, Project Manager, participated for the employer. Employer Exhibits One through Five was received as evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment as a full-time laborer on May 18, 2009, and last worked for the employer on November 20. The claimant was terminated on November 20 for operating a forklift without training in light of prior discipline.

The claimant was verbally warned by his supervisor on June 24 for his attitude, and in August for operating an aerial lift without training or authorization. The claimant was issued a written warning with a seven-day suspension on June 30 for damaging fireproof equipment. The claimant attempted a repair without employer permission when he did not have the experience to do so. The claimant was not a certified forklift operator, and he had been told by a supervisor prior to November 20 not to do so. The claimant was observed operating a forklift on November 20 without supervisor permission, and was terminated.

**REASONING AND CONCLUSIONS OF LAW:**

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 administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on November 20, 2009, for repeated violations of company policy by failing to perform work as instructed.

The claimant was verbally warned about performing jobs he was not trained or qualified to do prior to the most recent incident. The claimant admits he was not qualified to operate a forklift, and his decision to do so constitutes job disqualifying misconduct in light of his discipline record.

**DECISION:**

The department decision dated January 5, 2010, reference 01, is affirmed. The claimant was discharged for misconduct on November 20, 2009. Benefits are denied until the claimant

requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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