IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

GREGORY W SUMMY
Claimant

JACOBSON STAFFING COMPANY
Employer

APPEAL NO. 13A-UI-02216-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/27/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Jacobson Staffing Company (employer) appealed a representative's February 14, 2013 decision (reference 01) that concluded Gregory Summy (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 21, 2013. The claimant participated personally. The employer participated by Elizabeth Jerome, Account Manager. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 20, 2010, as a full-time temporary forklift driver assigned to work at Jacobson Warehouse. The claimant signed for receipt of the employer's handbook on July 20, 2010. The employer did not issue the claimant any warnings during his employment.

On January 30, 2013, the claimant was driving a forklift and the workplace was busy. Near an overhead door the claimant picked up a rack. As he picked up the four foot by four foot rack, it caught the roller on the door. The claimant could have seen this had he been looking at the door but he was watching for traffic and did not realize how close the rack was situated to the door. Later that day the employer noticed damage to the door and asked who did the damage. No one admitted doing the damage. The employer viewed the video of the accident and it appeared the claimant could see the damage.

The employer called the claimant into his office and asked him about the damage. The claimant said he did not know anything about the damage. The employer showed the claimant the video and the claimant was shocked. He could see that it appeared he that he looked at the door but he knew he had not. The employer terminated him on January 30, 2013, for lying about damaging the door.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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 in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. Henry v. Iowa Department of Job Service, 391 N.W.2d 731 (Iowa App. 1986). The employer provided only one act of carelessness at the hearing. The claimant's single act of negligence does not rise to the level of misconduct. In addition, the administrative law judge finds that the claimant's testimony is consistent from the time of the accident to the date of the hearing. He was surprised when he saw the video and the damage that occurred. The employer has not proven that the claimant lied about knowing he caused damage. The employer did not provide sufficient evidence of job-related misconduct. Benefits are allowed.

DECISION:

The representative's February 14, 2013 decision (reference 01) is affirmed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

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