

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WILLIAM J POTTER JR**  
Claimant

**APPEAL NO. 09A-EUCU-00499-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MANPOWER TEMPORARY SERVICES**  
Employer

**OC: 11/23/08**  
**Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct  
Section 96.6(2) – Timeliness of Protests/Appeals

**STATEMENT OF THE CASE:**

Manpower Temporary Services filed an appeal from a representative's decision dated November 23, 2009, reference 05, which held that no disqualification would be imposed regarding William Potter's separation from employment. After due notice was issued, a hearing was held by telephone on July 6, 2010. Mr. Potter participated personally and was represented by Erin Dooley, Attorney at Law. The employer participated by Lori Sander, Staffing Specialist, and Cynthia Hussmann of TALX Corporation.

As a result of the failure to comply with discovery requests, the administrative law judge imposed sanctions as allowed by 871 IAC 26.9(8). The employer was prohibited from providing testimony on any matter that was asked in the interrogatories propounded by Mr. Potter.

**ISSUE:**

At issue in this matter is whether the employer filed a timely protest to Mr. Potter's claim and whether it timely appealed the November 23, 2009 representative's decision. If the protest and appeal are determined to be timely, the issue then becomes whether Mr. Potter was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Potter initially filed a claim for job insurance benefits effective November 23, 2008. The employer filed a protest on or about December 5, 2008. On January 2, 2009, Workforce Development issued a determination (reference 03) which allowed benefits to Mr. Potter but denied the employer a relief from charges. The determination was not appealed.

Mr. Potter began working on an assignment with Winegard Company on September 8, 2008. He was discharged from the assignment on January 16, 2009. He was removed because he struck a coworker with the forklift. The individual was crouched on the floor pulling merchandise and Mr. Potter could not see him over the load he was carrying on the forklift. He did not see

the individual until he stood up after being struck. Mr. Potter immediately stopped and asked if the individual was injured and he indicated he was not. Approximately three days later, Mr. Potter was discharged. The only other incident involving the forklift was when he slid into a door while driving outside.

The employer was mailed a new notice of claim for Mr. Potter on October 21, 2009. The employer filed its protest on November 2, 2009. On November 23, 2009, a decision was issued allowing benefits to him. The employer filed an appeal from that determination on December 3, 2009.

#### **REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge is satisfied that the employer submitted a timely protest to the claim Mr. Potter initially filed effective November 23, 2008. The protest resulted in the January 2, 2009 decision that allowed benefits to Mr. Potter. The administrative law judge is likewise satisfied that the employer submitted a timely protest after receiving the October 21, 2009 notice of claim. That protest resulted in the determination dated November 23, 2009. An appeal of the November 23 decision was due by December 3, 2009. The employer's appeal is dated December 3 and is stamped as being received in the Workforce Development Appeals Section on December 3, 2009. For the above reasons, the administrative law judge concludes that the employer has filed timely protests and a timely appeal in this matter. As such, there is jurisdiction over the separation issue.

Mr. Potter was unemployed because he was discharged from his assignment with Winegard Company on January 16, 2009. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Potter was discharged because of an accident involving the forklift he was driving. There was no evidence that he was operating the forklift recklessly, carelessly, or at an excessive rate of speed. Nor was there evidence that he was carrying more product than allowable. He simply did not see the coworker because he was crouched down.

At most, Mr. Potter's actions constituted negligence. Negligence is only disqualifying if it is so recurrent as to constitute a substantial disregard of the employer's standards or interests. 871 IAC 24.32(1). A single act of negligence is not sufficient to establish disqualifying misconduct. Henry v. Iowa Department of Job Service, 391 N.W.2d 731 (Iowa App. 1986). For the reasons stated herein, it is concluded that the employer has failed to satisfy its burden of proof. As such, benefits are allowed.

**DECISION:**

The representative's decision dated November 23, 2009, reference 05, is hereby affirmed. Mr. Potter was discharged but misconduct has not been established. Benefits are allowed, provided he is otherwise eligible.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/css