

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

TODD A PETERSEN
619 – 1ST AVE
CLINTON IA 52732

LAMSON & SESSIONS COMPANY
ATTN LIN FOSBURG
PO BOX 400
CLINTON IA 52733

Appeal Number: 04A-UI-02137-CT
OC: 01/25/04 R: 04
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Lamson & Sessions Company filed an appeal from a representative's decision dated February 18, 2004, reference 01, which held that no disqualification would be imposed regarding Todd Petersen's separation from employment. After due notice was issued, a hearing was held by telephone on March 17, 2004. Mr. Petersen participated personally and Exhibits A, B, and C were admitted on his behalf. The employer participated by Lin Fosburg, Human Resources Clerk, and Drew Bush, Manager of Human Resources.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Petersen was employed by Lamson & Sessions Company from February 22, 1993 until January 27, 2004. He was last employed full time as a material handler. He was discharged because he struck a coworker while backing up with his forklift on January 23. He had surveyed his surroundings and briefly sounded his horn before backing up. There was no one in the path of the forklift at that time. None of the other employees in the area heard the horn but did hear the beeps automatically emitted when the forklift is being driven in reverse. As Mr. Petersen was backing up, another employee entered the area and was struck by the forklift. He was not operating the forklift at an excessive rate of speed. The other employee was using a pallet jack to move crates at the time of the accident.

Mr. Petersen had received a verbal warning on November 1, 2003 for not wearing his seatbelt in the forklift. Prior to that, he had not been disciplined since 1999.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Petersen was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct in connection with the employment. The employer had the burden of proving disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Petersen's discharge was triggered by the accident of January 23. The evidence of record failed to establish that he was operating the forklift negligently on this occasion. The other individual was not in the path of the forklift when Mr. Petersen began backing up. The forklift was beeping to alert others in the area of its presence. In spite of the beeping, the other individual did not take steps to remove himself from the path of the forklift. Although Mr. Petersen was the individual operating the forklift, the evidence failed to establish that he was at fault in the accident.

Even if the administrative law judge were to conclude that Mr. Petersen was negligent on January 23, disqualifying misconduct would still not be established. Negligence is only disqualifying if it is sufficiently recurrent so as to manifest an intentional disregard of the employer's interests or standards. See 871 IAC 24.32(1). The evidence establishes only two incidents which might be considered negligent behavior, that of November 1, 2003 and that of January 23, 2004. The incident in 1999 is too remote in time to be considered part of a pattern or practice. Two incidents of possible negligence does not establish sufficient recurrence to constitute disqualifying misconduct.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that the employer has failed to satisfy its burden of proof. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated February 18, 2004, reference 01, is hereby affirmed. Mr. Petersen was discharged but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/kjf