IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

FREDDY TORO
Claimant

SCHENKER LOGISTICS INC
Employer

APPEAL NO. 10A-UI-03655-BT

ADMINISTRATIVE LAW JUDGE DECISION

Original Claim: 01/24/10
Claimant: Appellant (2)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Freddy Toro (claimant) appealed an unemployment insurance decision dated March 5, 2010, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Schenker Logistics, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 22, 2010. The claimant participated in the hearing with Team Lead Tim Rodreck. The employer participated through Nicki Brick, Human Resources Generalist. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time forklift operator from May 19, 2008 through January 18, 2010, when he was discharged. He had been placed on a final written warning on July 28, 2009 for his involvement in a major safety incident. On July 24, 2009, the claimant was going to the office and attempted to park his forklift in an area not designated for parking. There was some water on the floor and the forklift hit it and could not stop. The forks ran through the office wall, severing some cords and going into the back of a computer. The employee who usually sat in that area was not hurt because she was not at her desk.

The claimant hit his finger with a hammer on January 16, 2010 while working in the R3W building. He worked the shift from 6:00 p.m. to 6:00 a.m. and it was approximately 5:10 a.m., but everyone was leaving as there was no more work to be done. The claimant did not realize how serious the injury was until after he went into the bathroom, where he was going to pull off his fingernail. He could not see anyone around him at the time and did not go into the next building to notify management because he wanted to get to the hospital for treatment. The claimant did try calling Tim Rodreck, his team lead, at his home two times but Mr. Rodreck did

not receive the message until two days later. Mr. Rodreck is not a member of management and the claimant should have notified a member of management.

The employer became aware of the claimant's injury on the following morning when the hospital faxed over the medical documentation. Failure to immediately notify the employer of a work-related injury is a Class One violation. This policy is in place for both the employees' and the employer's benefit, since the employer needs to be aware of the injury to call an ambulance if necessary and to direct care. The claimant should not have been driving with such a severe injury. Since the claimant was already on a final warning, he was discharged on January 18, 2010.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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 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). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to

unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988).

The claimant was on a final warning as of July 28, 2009 and was discharged on January 18, 2010 for a policy violation. He injured his thumb at work and failed to report it before he left to seek medical treatment. The claimant's explanation for his actions is that no member of management was around him at the time and he wanted to get treatment for it as soon as possible. While his actions were clearly against policy, they represent poor judgment as opposed to any intentional wrongdoing. Misconduct must be substantial in nature to support a disqualification from unemployment benefits. Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1982). The focus is on deliberate, intentional, or culpable acts by the employee. Id. The employer has not met its burden. Work-connected misconduct as defined by the unemployment insurance law has not been established in this case and benefits are allowed.

DECISION:

The unemployment insurance decision dated March 5, 2010, reference 01, is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Susan D. Ackerman
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw