

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JONATHON W BRANDT
Claimant

APPEAL NO: 12A-UI-12979-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OLD DOMINION FREIGHT LINE INC
Employer

OC: 09/30/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
871 IAC 24.32(8) – Current Act

STATEMENT OF THE CASE:

The employer appealed a department decision dated October 16, 2012 reference 01 that held the claimant was not discharged for misconduct on September 19, 2012, and benefits are allowed. A telephone hearing was held on November 29, 2012. The claimant participated. Scott Goodrich, Service Manager, participated for the employer. Employer Exhibit One was received as evidence.

ISSUE:

Whether 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 part-time employment on July 20, 2010, and last worked for the employer as a full-time dock worker on September 19, 2012. He received the employer policies in an employee handbook that provided for progressive discipline.

The employer issued claimant a coaching warning on May 10, 2012 for an incident where he misloaded freight on May 6. He was issued a final written warning on May 23 for a similar incident on May 18. The employer instructed claimant to make two scans, one off trailer, and one on to the next trailer to ensure proper freight delivery. He was put on notice that a further incident could lead to termination.

The claimant was provided a freight manifest and he had an electronic scan to aid him in the loading process. Claimant relied on a floor dock lead man to direct him in loading the freight onto the correct trailer. Claimant worked long hours and this is a fast-paced business.

On September 18 the employer learned that claimant had loaded freight intended for Houston delivery that was in La Crosse Wisconsin. Upon review, claimant believes that only a part of the

Houston delivery was misloaded and it had passed through two terminals before arriving at La Crosse. The employer considered claimant a good employee but it discharged him on September 20 for making too many freight loading errors.

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 failed to establish that the claimant was discharged for misconduct in connection with employment on September 20, 2012.

The claimant did not intentionally or deliberately violate any freight loading policy of the employer. The issue is whether he was so repeatedly careless in his job that it constitutes job disqualifying misconduct.

The claimant worked long hours in a fast-paced delivery business and was at the mercy of a dock lead man to correctly load freight. The employer properly warned claimant to exercise caution in the loading process but the issue comes down to whether that process is sufficient to overcome human error. There is no question that there will be some miss-sent deliveries. The employer's conclusion claimant's mistakes were excessive to the point it terminated is not questioned.

The final incident is indicative of a delivery error that is more due to the freight-loading process rather than employee carelessness. It is reasonable to believe that the dock lead person made the mistake of directing claimant to load the mis-sent freight rather than claimant failing in some respect to do correctly according to the employer process. No current act of misconduct is established for this reason.

DECISION:

The department decision dated October 16, 2012 reference 01 is affirmed. The claimant was not discharged for misconduct on September 20, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs