

**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**

**TIM D CAFFERTY
2881 – 280TH ST
ROCKWELL CITY IA 50579**

**AMPC INC
ATTN LINDA WILSON
2425 SE OAK TREE CT
ANKENY IA 50021**

**Appeal Number: 05A-UI-12162-CT
OC: 10/30/05 R: 01
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:

AMPC, Inc. filed an appeal from a representative's decision dated November 22, 2005, reference 01, which held that no disqualification would be imposed regarding Tim Cafferty's separation from employment. After due notice was issued, a hearing was held by telephone on December 15, 2005. Mr. Cafferty participated personally. The employer participated by Bill Townsend, Plant Superintendent; Bruce Page, Supervisor; and Linda Wilson, Benefits Manager.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Cafferty was employed by AMPC, Inc. from October 21, 1991 until October 31, 2005 as a full-time laborer. He was discharged after receiving a series of warnings.

On January 7, 2005, Mr. Cafferty was unloading raw material from a truck and failed to put chock blocks behind the tires. This was considered a safety violation and, as a result, he received a written warning. On January 27, Mr. Cafferty received another written warning and a three-day suspension after he ran over a leg of a tripod holding a light. He was backing up with the forklift when the incident occurred. The light was not a permanent fixture and he did not see it when he was backing up. Mr. Cafferty received a third written warning and another three-day suspension because he failed to adequately clean the cooler floor on July 5. There was still debris on the floor when the supervisor inspected it after Mr. Cafferty said it had been cleaned.

The final incident that caused Mr. Cafferty's discharge occurred on October 28 when he was changing fill lines. He was changing the line from one cooker to another. There are clamps to hold the lines together. The lines will usually attach and detach without any problems. On this occasion, Mr. Cafferty was upset over the fact that he had been disciplined for not helping a coworker. As he was changing the line, he hit it with his shoulder, causing it to fall 15 feet. The line is six-feet long by eight inches in diameter. Mr. Cafferty was suspended on October 29 and notified of his discharge on October 31, 2005.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Cafferty 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. 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). The employer cited four incidents that contributed to the decision to discharge Mr. Cafferty. The incidents of January 7, January 27, and July 5 represented instances of simple negligence. He was in a hurry and neglected to use the chock blocks on January 7. There were no adverse consequences as a result. He neglected to see the light when he was backing up his forklift on January 27. The light was not a permanent fixture such that he should have been aware of its location. Mr. Cafferty was negligent in failing to note all debris remaining on the cooler floor on July 5.

The administrative law judge does not believe Mr. Cafferty intended to cause the fill line to fall on October 28. He was exerting more pressure than usual because he was upset. The employer acknowledged that there are sometimes problems disconnecting the lines. It seems unlikely that Mr. Cafferty would have had to exert much pressure if the lines disconnected readily. Therefore, it appears that some exertion was necessary in order to disconnect the lines. The administrative law judge cannot conclude that, but for the fact that he was upset, the incident would not have occurred.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that disqualifying misconduct has not been established. The negligence on Mr. Cafferty's part was not so recurrent as to manifest a substantial and intentional disregard for the employer's interests or standards. While the employer may have had good cause to

discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated November 22, 2005, reference 01, is hereby affirmed. Mr. Cafferty was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/kjf