

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL D LESTER**  
Claimant

**APPEAL NO: 17A-UI-09886-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DALE HOWARD INC**  
Employer

**OC: 08/27/17**  
**Claimant: Appellant (1)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Michael Lester filed a timely appeal from the September 21, 2017, reference 01, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that Mr. Lester was discharged on August 29, 2017 for wanton carelessness in performing his work. After due notice was issued, a hearing was held on October 12, 2017. Mr. Lester participated. Gary Roll represented the employer. Exhibit A was received into evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Michael Lester was employed by Dale Howard Auto Center from March 2017 until August 29, 2017, when Gary Roll, Service Manager, discharged him from the employment. Mr. Lester began the employment as the full-time Tire Center Manager. In about May 2017, Mr. Lester transitioned to a full-time Service Advisor position. Mr. Lester's supervisor throughout the employment was Gary Roll. Mr. Lester's discharge from the employment followed a series of incidents wherein Mr. Lester caused property damage through carelessness and/or negligence. The final incident that triggered the discharge occurred on August 29, 2017. On that day, Mr. Lester collected a customer's vehicle from a parking area near the employer's dealership so that the vehicle could be serviced at the dealership. Before Mr. Lester operated the vehicle, he observed that the back window of the vehicle was covered with dirt. The dirt on the back window would prevent a person from being able to see out the back window of the vehicle by looking at the rear view mirror or otherwise. Mr. Lester did not fully take this into account before he began to operate the vehicle. When Mr. Lester backed the vehicle out of its parking spot to leave the area, he did not observe the telephone pole support cable located behind the vehicle. Mr. Lester backed the vehicle into the cable and, thereby caused damage to the rear bumper of the vehicle. Mr. Lester promptly reported the damage to Mr. Roll. To make the customer whole, the dealership replaced a chrome strip on the bumper and repainted the bumper. The

financial loss associated with the damage was about \$1,000.00. The employer absorbed that cost.

The next most recent incident that factored in the discharge occurred a day earlier, on August 28, 2017. On that day, Mr. Lester lowered a vehicle that was on a raised hoist without first assuring that the tool box in the vicinity was sufficiently out from under the vehicle. The tool box belonged to the shop technician who had been inspecting the vehicle to determine the necessary repair. Mr. Lester lowered the vehicle onto the tool box and caused \$75.00 work of damage to the tool box. Mr. Lester apologized to the shop technician and offered to compensate him for the damage to his tool box. Mr. Lester indicates that at the time he engaged the hoist lowering switch he was distracted by his conversation with the customer and the need to focus on the customer. The customer was present as Mr. Lester lowered his vehicle onto the tool box.

The next most recent incident that factored in the discharge occurred on July 26, 2017. On that day, Mr. Lester drove the right rear wheel box or fender of a customer's "dually" truck into the door frame of shop's overhead door. Mr. Lester had misjudged the distance between the right rear wheel box or fender and the door. The collision resulted in \$2,500.00 in damage to the wheel box. The dealership replaced the wheel box and absorbed the cost. Several members of the management team were present and observed this collision.

The earliest incident that factored into the discharge occurred in November 2016. In that instance, Mr. Lester attempted to back a vehicle out of the service shop without first confirming that the overhead garage door behind him was open. Mr. Lester backed into the closed overhead door and caused substantial damage to the door and minor damage to the truck. The employer paid to fix the door and absorbed the \$200.00 cost of repairing the truck. Mr. Lester reported the incident to Mr. Roll.

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

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See *Crosser v. Iowa Dept. of Public Safety*, 240 N.W.2d 682 (Iowa 1976).

The evidence in the record establishes a pattern of carelessness and/or negligence on the part of Mr. Lester. The three final incidents occurred within a five-week period. Each of these property damage incidents would not have happened if Mr. Lester had exercised reasonable care. Each of these property damage incidents forced the employer to pay the cost of Mr. Lester's careless behavior. The employer was reasonably concerned that the continued carelessness and property damage involving customer vehicles would expose the employer to reputational damage in the Iowa Falls community. The pattern of conduct was sufficient to indicate a willful and wanton disregard of the employer's interests.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Lester was discharged for misconduct. Accordingly, Mr. Lester is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Lester must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

**DECISION:**

The September 21, 2017, reference 01, decision is affirmed. The claimant was discharged on August 29, 2017 for misconduct in connection with the employment based on a pattern of carelessness and/or negligence. The claimant is disqualified for unemployment benefits until he has worked in and paid wages for insured work equal to ten times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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