

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOHN C MCLAUGHLIN
Claimant

IOWA MOLD TOOLING CO INC
Employer

APPEAL 17A-UI-05514-JCT
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 04/30/17
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 19, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 12, 2017. The claimant participated personally. The employer did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a supervisor I and was separated from employment on April 21, 2017, when he was discharged for insubordination. The claimant last performed work on April 12, 2017 when he was suspended.

The claimant worked for the employer for approximately 11 years. He received a copy of the employer handbook, and was aware of the employer rules. In addition, the claimant was responsible for supervising approximately 100 employees on the second shift. Prior to separation, the claimant had no warnings and was unaware his job was in jeopardy.

At the time of separation, the claimant was called after a 9 day suspension and informed he was being discharged for insubordination. No other information was given to the claimant, and the claimant was not presented or mailed a termination document detailing his separation. The employer did not attend the hearing or present a written statement in lieu of attending the hearing.

The undisputed evidence is on the claimant's final day of employment, he was called to a meeting and corporate human resources was unexpectedly present. The claimant thought the meeting was being called to discuss a disagreement he had two days prior with a subordinate employee during a disciplinary meeting. Instead, the claimant was interviewed by the employer, through its corporate human resources officer, who stated that three months prior, he had received a phone call that there was a "big theft" problem. Then two months prior, the same employee called him to report there was a "theft and drug problem" at the employer. A third call was placed to the officer one week prior by the same employee who reported there was a theft and drug problem, that the claimant was the problem, and "how does that make you feel?" The human resources officer did not provide details or the identity of the reported caller. The claimant acknowledged that he had discharged a number of employees during his employment and had on occasion received threats and comments to him afterwards on Facebook and social media. He was otherwise unsure who would have made the reports.

During the meeting, the employer alleged the claimant stole two welders, valued at \$7,000 a piece and may be under the influence of drugs. The claimant stated that he was unaware any welder had been removed, and that removal would have been viewed on surveillance footage, as it would require a forklift to move one, and not easily concealable. The claimant denied taking the welders, borrowing them or removing them from the employer's premises. The claimant further voluntarily participated in a drug screening to prove he was not under the influence of drugs or alcohol. The claimant denied tampering with or failing the drug screening and never received the results from the employer.

REASONINGS AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

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).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. 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." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

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).

In this case, the claimant was informed that he was being discharged for insubordination. No other details were given to the claimant and he is unaware to whom he was insubordinate at the employer. On the claimant's final day of employment before suspension, he denied alleged theft of welders when questioned by a corporate human resources officer, and denied his failure to cooperate or pass a drug screening on his final day of employment. The employer did not attend the hearing and presented no evidence to refute the claimant's credible denial of wrongdoing, or to support the assertion that the discharge was based on misconduct in connection with the employment. The employer has failed to establish that the claimant was discharged for a final or current act of misconduct, and without such, the evidence in the record does not establish misconduct. Therefore benefits are allowed.

DECISION:

The May 19, 2017, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. The benefits claimed and withheld shall be paid, provided he is otherwise eligible.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn