IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ANDY KROMPHARDT
Claimant

US POSTAL SERVICE
Employer

APPEAL NO. 15A-UCFE-00022-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 05/17/15
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 11, 2015, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant had been discharged on January 8, 2015 for no disqualifying reason. After due notice was issued, a hearing was held on July 29, 2015. Claimant Andy Kromphardt participated. Rick Smith, Labor Relations Specialist, represented the employer and presented additional testimony through Lynn Worrell. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits One through Six into evidence. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

ISSUES:

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

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Andy Kromphardt was employed by the United States Postal Service as a full-time regular city carrier until January 8, 2015, when Lynn Worrell, Coralville Station Manager, discharged him from the employment. Mr. Kromphardt had started the employment in May 2014 as a city carrier assistant and commenced the regular city carrier position in December 2014. At that time, Ms. Worrell became Mr. Kromphardt's immediate supervisor.

The sole incident that triggered the discharge occurred on January 7, 2015, when Mr. Kromphardt accidentally locked himself out of his delivery van while the engine was running. The employer's driver protocol required that the engine of a carrier's delivery vehicle not be running unless that carrier was sitting in the driver's seat. Mr. Kromphardt had gone through an abbreviated version of the employer's driving training. Mr. Kromphardt understood that particular, right-side drive vehicles were prone to moving on their own if left running and thought that the prohibition against leaving the vehicle running was primarily directed at the right-side drive vehicles. On January 7, 2015, the outside temperature was dangerously low freezing. As part of the daily briefing, a supervisor had directed staff to do what they could to keep warm that day. While Mr. Kromphardt was working his route, he exited the vehicle with the engine running and began to perform work from another open door. That door slid shut and the vehicle automatic locked with the key in the ignition and the engine running. The particular area where this occurred was a low income housing complex, but there was no one else present. Mr. Kromphardt's cell phone was locked in the running vehicle. Mr. Kromphardt used a phone in a nearby facility to call his supervisor, Ms. Worrell, but the line was busy. Mr. Kromphardt left a message describing his predicament and the steps he had taken to try to resolve it. Mr. Kromphardt then contacted a locksmith to come unlock the vehicle. Mr. Kromphardt was a AAA member. The locksmith assistance was part of the AAA membership services and did not result in any charge to the Postal Service. After Ms. Worrell met with Mr. Kromphardt to discuss the matter, she concluded that the policy violation was sufficiently egregious to warrant discharge from the employment.

REASONING AND CONCLUSIONS OF LAW:

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).

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 weight of the evidence in the record establishes that the incident on January 7, 2015 resulted from an error in judgment on the part of Mr. Kromphardt, rather than from an intention to violate the employer's work rules. Mr. Kromphardt was focused on keeping warm in the severely inclement weather. Mr. Kromphardt made an error in judgment when he concluded he would be okay to leave the vehicle unlocked and running for a moment while he performed duties in the immediate vicinity of the vehicle. The error in judgment could have led to a much worse outcome had someone else entered the driver's area while the vehicle was unlocked and running. But that did not happen. Instead, Mr. Kromphardt's error in judgment resulted only in him being locked out of the running vehicle on a frigidly cold day. Mr. Kromphardt immediately took steps to fix the problem that his error in judgment had created. After he was unable to get ahold of the employer, Mr. Kromphardt took further reasonable steps to try to quickly resolve the problem with the least impact on the employer and the performance of his work duties. While this isolated error in judgment may have been sufficient under the employer's work rules for the employer to discharge Mr. Kromphardt from the employment, the conduct did not constitute misconduct in connection with the employment that would disqualify Mr. Kromphardt for unemployment insurance benefits. Because Mr. Kromphardt was discharged for no disqualifying reason, he is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The June 11, 2015, reference 01, decision is affirmed. The claimant was discharged on January 8, 2015 for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

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