

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH A BREITSPRECKER
Claimant

APPEAL NO. 16A-UI-05883-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EAST SIDE JERSEY DAIRY INC
Employer

**OC: 05/01/16
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 24, 2016, reference 01, decision that disqualified the claimant for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that the claimant had been discharged on May 6, 2016 for misconduct in connection with the employment. After due notice was issued, a hearing was held on June 21, 2016. The claimant participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. The hearing in this matter was consolidated with the hearing in appeal numbers 16A-UI-05884-JT-T and 16A-UI-05885-JT-T, however the appeal in 16A-UI-05884-JT-T was withdrawn.

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: The claimant was employed by East Side Jersey Dairy, Inc. as a full-time “cooler spotter” from 2012 until May 6, 2016, when the employer discharged him from the employment. The employer is a milk processing and bottling plant. The claimant’s primary work duties involved backing trailers into the dock area to be loaded and unloaded and moving trailers around the grounds of the milk processing plant. The claimant’s duties also involved loading trailers and relieving other “cooler spotters” as needed.

The sole incident that factored in the discharge was an accident that occurred on May 4, 2016, while the claimant was pulling away from a dock area with a trailer in tow. The claimant looked back briefly to make certain that he would not collide with a trailer parked next to the one he was pulling. The claimant misjudged the distance between himself and another trailer in front of him, turned the wheel to steer the tractor he was operating, and collided with the trailer in front of him. The collision caused substantial damage to the trailer the claimant hit and to the tractor the claimant was operating. The claimant was traveling at a reasonable and appropriate speed at the time of the collision.

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 employer failed to participate in the appeal hearing and thereby failed to present any evidence to support the allegation that the claimant was discharged for misconduct in connection with the employment. The evidence in the record establishes that the claimant was discharged in response to a single accident involving ordinary negligence. Despite the damage caused by the accident and the financial loss involved, the evidence fails to establish a willful or wanton disregard of the employer's interests. The evidence fails to establish a pattern of carelessness and/or negligence that would indicate a willful or 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 the claimant was discharged for no disqualifying reason. Accordingly, the claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The May 24, 2016, reference 01, decision is reversed. The claimant was discharged on May 6, 2016 for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs