

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EDWIN D VORISEK

Claimant

APPEAL NO. 15A-UI-13199-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SUCCESSFUL LIVING SUPPORTIVE

Employer

OC: 09/06/15

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Edwin Vorisek filed a timely appeal from the November 18, 2015, reference 02, decision that disqualified him for benefits and that relieved the employer of liability for benefits; based on an Agency conclusion that Mr. Vorisek was discharged on August 31, 2015 for misconduct in connection with the employment. After due notice was issued, a hearing was held on December 17, 2015. Mr. Vorisek participated. Roger Goedken represented the employer and presented additional testimony through Pat Meyer. The hearing in this matter was consolidated with the hearing in Appeal Number 15A-UI-13200-JTT. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant.

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: Edwin Vorisek was employed by Successful Living Supportive as a full-time maintenance person until August 31, 2015, when the employer discharged him in response to a pattern of negligence. Mr. Vorisek's immediate supervisor was Pat Meyer, Facilities Coordinator. Mr. Vorisek was responsible for performing maintenance work at three residential facilities operated by the employer and at the employer's office. On July 2, 2015, the receiving a fire inspection report from the Iowa City Iowa City Fire Department regarding that agency's inspection of the employer's office. The report identified first safety code violations that included a burnt out bulb in a fire exit sign, fire extinguishers that had not been inspected or tested, and electrical power strips that were "piggybacked" one onto another. Mr. Vorisek was the person responsible for remedying the violations. The employer immediately directed Mr. Vorisek to remedy the violations and provided him with a copy of the fire safety inspection report. Mr. Vorisek took no steps to remedy the violations in response to the directive issued to him during the first week of July. Mr. Vorisek took not steps to resolve the issues until on or after August 25, 2015; when the employer again addressed the matter with him. On August 18, 2015, the employer received a follow-up inspection report from the Iowa City Fire Department

that referenced the same three fire safety violations. Ms. Meyer was away from work at the time the employer receiving the follow up report. Upon Ms. Meyer's return to work on August 25, Roger Goedken, Executive Director, met with Ms. Meyer regarding the unresolved fire safety code violations. Ms. Meyer addressed the matter with Mr. Vorisek, who said the issues and the directive to resolve them had slipped his mind.

The employer discharged Mr. Vorisek from the employment after concluding that the failure to resolve the fire safety code violations in a timely manner was part of a pattern of Mr. Vorisek failing to follow directives and failing to complete his assigned work. On June 17, 2015, the employer met with Mr. Vorisek to address these concerns. The concerns at that time included Mr. Vorisek's failure to replace windows and window screens despite the employer's prior directives. The concerns also included Mr. Vorisek's failure to mow properties on a regular basis. The concerns also included Mr. Vorisek's frequent trips to Menard's; which took him away from other duties. The employer met with Mr. Vorisek again on July 10, 2015 to discuss similar concerns. The employer at that time directed Mr. Vorisek to complete a daily report of maintenance tasks he had completed during his shift. The employer also directed Mr. Vorisek to direct his supplies requests to Ms. Meyer, who would determine whether a trip to Menard's was warranted. Mr. Vorisek completed three of the daily task reports and then ceased following the directive. Within a couple weeks of the meeting, Mr. Vorisek disregarded the directive regarding the Menard's trips and made an unauthorized trip to Menard's. When Ms. Meyer returned to work on August 25, she noted that issues with window screens and stuck windows had still not been resolved.

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).

Continued failure to follow reasonable instructions constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See Woods v. Iowa Department of Job Service, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See Endicott v. Iowa Department of Job Service, 367 N.W.2d 300 (Iowa Ct. App. 1985).

The evidence in the record establishes a long-standing pattern on the part Mr. Vorisek of not completing assigned tasks in a timely manner and of disregarding reasonable employer directives without good cause for doing so. It is important to note that a number of the assigned tasks that Mr. Vorisek failed to address in a timely manner and without repeated directives included matters concerning the safety of the employer's clients and staff. The pattern was sufficient to indicate a willful disregard of the employer's interests and insubordination.

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

DECISION:

The November 18, 2015, reference 02, decision is affirmed. The claimant was discharged for misconduct. 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 allowance, provided he meets all other eligibility requirements. The employer's account will not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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