

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DARIUS HOWARD BRANDON
Claimant

APPEAL NO. 17A-UI-04071-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GERARD ELECTRIC INC
Employer

OC: 03/12/17
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Darius Howard Brandon filed a timely appeal from the April 4, 2017, reference 02, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on the claims deputy's conclusion that Mr. Howard Brandon was discharged on March 9, 2017 for failure to follow instructions in the performance of his job. After due notice was issued, a hearing was held on May 23, 2017. Mr. Howard Brandon participated. Alan Gerard represented the employer and presented additional testimony through Jeff Blount. Exhibits 1 and 2 were 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: Darius Howard Brandon was employed by Gerard Electric, Inc. as a full-time apprentice electrician from August 2016 until March 9, 2017, when Alan Gerard, Vice President, discharged him from the employment. During the employment, the employer had Mr. Howard Brandon perform work on a large project at the Veterans Administration Hospital in Iowa City. During the employment, Mr. Howard Brandon was in his third year of a five-year apprenticeship program. The employment was part of Mr. Howard Brandon's on-the-job training in connection with the apprenticeship program. At the beginning of February 2017, the employer assigned Mr. Howard Brandon to work under Journeyman electrician Jeff Blount. Had Mr. Howard Brandon not been discharged from the employment on March 9, 2017, he was scheduled to move to a different area of the hospital project and commence working under another electrician.

In connection with his participation in the apprenticeship program, Mr. Howard Brandon was required to possess a limited number of tools that he would need to use in his daily duties as an electrician. Mr. Howard Brandon purchased the required tools at the start of his apprenticeship. In February 2017, Mr. Howard Brandon's tools were stolen from his father's vehicle. Mr. Howard Brandon replaced some but not all of the stolen tools due to payment of child

support and his otherwise limited finances. After Mr. Howard Brandon's tools were stolen, he sometimes lacked a tool he needed to perform his work duties. Mr. Blount was not pleased that Mr. Howard Brandon lacked some essential tools, but allowed Mr. Howard Brandon to borrow tools so long as he asked in advance of using the tool.

The final incident that triggered the discharge came to the employer's attention on March 9, 2017, when Mr. Blount discovered that Mr. Howard Brandon had damaged some wire he had "pulled" as part of the installation of a fire alarm system. In the course of pulling the wire through a long conduit pipe, some of the insulation on the wire had been scraped away so that bare wire was exposed. If Mr. Blount had not noticed the damage prior to completing the installation, it would have been difficult to troubleshoot the system electrical short that would have resulted from the defective installation. Mr. Howard Brandon had difficulty pulling the wire through the long conduit pipe without assistance and this was a factor in the wire being damaged during the pull. Mr. Howard Brandon frequently found Mr. Blount unavailable to assist as needed and pulled wire without assistance to remain productive. After Mr. Howard Brandon left the workplace at noon on March 9 to report for his apprenticeship class, the employer sent him a text message directing him not to return to the employment.

In making the decision to discharge Mr. Howard Brandon from the workplace, the employer considered other work quality issues. Early in Mr. Howard Brandon's time with Mr. Blount, Mr. Blount assigned Mr. Howard Brandon to pull and secure segments of low voltage wire. As Mr. Blount provided instructions for the work, he made reference to wiring code sections. Mr. Howard Brandon found it difficult to follow Mr. Blount's instructions and performed the work by copying similar work he had observed on the project. As a result, the work result did not meet Mr. Blount's requirements and had to be corrected. In another instance, Mr. Howard Brandon had difficulty pulling an especially long wire and Mr. Gerard had to step in to assist.

Mr. Howard Brandon found working under Mr. Blount difficult for interpersonal reasons. These issues were a factor in Mr. Howard Brandon's work performance and Mr. Blount's perception of his work performance. Mr. Blount's response to mistakes that Mr. Howard Brandon made sometimes involved an aspect of heckling, such as when Mr. Blount would invite other electricians to come observe Mr. Howard Brandon's mistake and have a laugh at Mr. Howard Brandon's expense. Mr. Howard Brandon felt that Mr. Blount was at times unnecessarily abrasive and dismissive. The interpersonal issues caused Mr. Howard Brandon to be more hesitant in asking for guidance.

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 evidence establishes that the employer had legitimate concerns about Mr. Howard Brandon. However, these issues arose from inexperience on the part of Mr. Howard Brandon and ineffective supervision on the part of Mr. Blount, rather than a willful disregard of the employer's interests. The weight of the evidence establishes that Mr. Howard Brandon performed the work to the best of his ability, but was unable to perform to the employer's satisfaction. Mr. Howard Brandon's inability to perform to the employer's expectations did not constitute misconduct and would not disqualify him for unemployment insurance benefits. Mr. Howard Brandon is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The April 4, 2017, reference 02, decision is reversed. The claimant was discharged on March 9, 2017 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/scn