

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WAYNE BURTON

Claimant

APPEAL NO. 11A-UI-08360-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC

Employer

OC: 05/15/11

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Wayne Burton filed a timely appeal from the June 22, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 18, 2011. Attorney Jim Hoffman represented Mr. Burton and presented testimony through Mr. Burton. Monica Dyer, human resources supervisor, represented the employer.

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: Wayne Burton was employed by West Liberty Foods as a full-time production worker from November 2010 until May 16, 2011, when Jean Spiesz, human resources manager, discharged him from the employment for allegedly eating a piece of meat product on the production line. The employer alleges that two employees reported to their respective supervisors that they saw Mr. Burton eating meat product on the production line. The employer refuses to identify the employees in question, though they continue to be employees of West Liberty Foods. The employer had a surveillance camera in the area, but it was not operating correctly and did not pick up any video to support the allegation. Mr. Burton denied the allegation. The employer's discharge of Mr. Burton occurred in the context of a worker's compensation claim.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

871 IAC 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.

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 has failed to present sufficient evidence, and sufficiently direct and satisfactory evidence, to prove misconduct in connection with the employment. The employer had the ability to present testimony through the two employees who allegedly witnessed the incident that triggered the discharge. The employer declined to provide such testimony and further declined even to identify the accusers. The employer has presented insufficient evidence to rebut Mr. Burton's testimony that he did not consume meat product on production floor. The fact that

Mr. Burton's discharge occurred in the context of a worker's compensation claim casts additional suspicion on the employer's unsupported allegation of misconduct

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Burton was discharged for no disqualifying reason. Accordingly, Mr. Burton is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Burton.

DECISION:

The Agency representative's June 22, 2011, reference 01, decision is reversed. The claimant was discharged 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/kjw