

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

DAMEN D BROWN
Claimant

APPEAL NO. 18A-UI-11022-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WHIRLPOOL CORPORATION
Employer

OC: 10/07/18
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 October 30, 2018, 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 the deputy's conclusion that the claimant was discharged on October 5, 2018 for no disqualifying reason. After due notice was issued, a hearing was held on November 27, 2018. Claimant Damen Brown did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. Amih Avegnon Sallah represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1 and 2 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 him 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: Damen Brown was employed by Whirlpool Corporation as a full-time assembler from March 2017 until October 5, 2018, when Michelle Readnour, Supervisor/Superintendent, discharged him from the employment for allegedly walking off the job. Mr. Brown's work hours were 3:30 p.m. to midnight, Monday through Friday. At the start of the employment, the employer provided Mr. Brown with a set of work rules that included a list of acts that could subject Mr. Brown to discipline up to and including discharge from the employment. That list included the following: "Leaving the premises during regular working hours without either a written excuse from the Supervisor or an order from First Aid." The incident that triggered the discharge occurred on October 3, 2018. On that day, Mr. Brown arrived for work at 3:22 p.m., but left the workplace at

3:30 p.m. The employer witness is unaware of the circumstances surrounding Mr. Brown's departure at the scheduled start of his shift. The only other matter that factored in the discharge decision was an alleged hour-long absence from the production line that resulted in Supervisor Isaac Malone issuing a written reprimand to Mr. Brown on November 9, 2017.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 Iowa Administrative Code rule

871-24.32(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 Iowa Administrative Code rule 871-24.32(4).

The evidence in the record establishes a discharge for no disqualifying reason. The employer presented insufficient evidence to prove misconduct in connection with early departure that triggered the discharge. The bare bones evidence presented by the employer was that Mr. Brown arrived early and then left the workplace at the scheduled start of his shift on October 3, 2018. The employer witness lacked personal knowledge. In the absence of evidence concerning the context or particulars of the incident, there is simply insufficient evidence to establish that Mr. Brown “walked off the job” or that the early departure was an unexcused absence under the applicable law. The employer similarly presented insufficient evidence to establish misconduct in connection with the much earlier matter that led to the November 9, 2017 written warning. Mr. Brown is eligible for benefits, provided he meets all other eligibility requirements. The employer’s account may be charged.

DECISION:

The October 30, 2018, reference 01, decision is affirmed. The claimant was discharged on October 5, 2018 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/rvs