

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

ISAAC YODER
Claimant

APPEAL NO. 18A-UI-11314-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SWIFT PORK COMPANY
Employer

OC: 10/07/18
Claimant: Respondent (1)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct
Iowa Administrative Code Rule 871-24.32(8) – Current Act Requirement

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 8, 2018, reference 02, decision that held the claimant was otherwise eligible provided he met all other eligibility requirements and that the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on October 13, 2018 for no disqualifying reason. After due notice was issued, a hearing was held on December 17, 2018. Claimant Isaac Yoder participated personally and was represented by attorney Andrew Zbaracki. Sergio Lopez represented the employer and presented additional testimony through Jeremy Purchase. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1 through 6, 9, 10, and 13 through 17 into evidence.

ISSUES:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

Whether the discharge was based on a current act.

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: Isaac Yoder was employed by Swift Pork Company, a/k/a JBS, as the full-time Environmental Manager from 2013 until October 12, 2018, when Jeremy Purchase, Plant Engineer, and Nicolas Aguirre, Human Resources Director, discharged him from the employment for alleged unsatisfactory work performance. Mr. Yoder was a salaried employee and set his own work hours to meet business needs. Mr. Yoder worked nine hours per day, six or seven days per week. Mr. Purchase was Mr. Yoder's immediate supervisor during the last two years of the employment.

On October 2, 2018, Mr. Purchase sent an email message to Mr. Aguirre regarding Mr. Yoder. The email does not explicitly advocate for discharging Mr. Yoder from the employment, but lists 11 incidents for Mr. Aguirre's consideration. The most recent incident listed, and the most recent incident that factored in the discharge decision, occurred on September 25, 2018. On that morning, Mr. Yoder provided short notice to Mr. Purchase of his need to attend a medical appointment. While there was no policy that told Mr. Yoder when and how to notify Mr. Purchase of his need to be away from work, Mr. Yoder understood that Mr. Purchase expected reasonable notice regarding such matters. Mr. Yoder provided notice at 7:38 a.m. via text message and referenced a medical appointment that was supposed to start at 7:30 a.m. Mr. Purchase responded via text message only that Mr. Yoder was late for his appointment. Mr. Yoder went to his appointment and returned to work about an hour later. Mr. Yoder continued to report for work and perform his regular duties until the October 12 discharge, but Mr. Purchase never again spoke to Mr. Yoder regarding the September 25 absence. The next most recent incident that factored in the discharge occurred on September 9, 2018 and came to Mr. Purchase's attention on that date. The employer said nothing to Mr. Yoder prior to the discharge date to put Mr. Yoder on notice that the incident could or would result in discharge from the employment.

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 because the discharge was not based on a current act. The final incident that factored in the discharge occurred on September 25, 2018 and came to the employer's attention that same day. The employer did not mention to Mr. Yoder, on September 25 or on any day leading up to the October 12, 2018 discharge, that the September 25 incident could or would trigger his discharge from the employment. The employer's 17-day delay between the employer's knowledge of the final incident and the discharge date was unreasonable delay. The next most recent incident that factored in the discharge occurred over a month before the discharge date and came to the employer's attention more than a month prior to the discharge. Because the discharge was not based on a current act, Mr. Yoder is eligible for benefits, provided he meets all other eligibility requirements. Because the discharge was not based on a current act, the administrative law judge need not consider whether the final incident or any earlier incident involved misconduct in connection with the employment. The employer's account may be charged for benefits.

DECISION:

The November 8, 2018, reference 02, decision is affirmed. The claimant was discharged for no disqualifying reason. The discharge was not based on a current act. The claimant is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs