

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHEN B CHASE
Claimant

APPEAL NO. 17A-UI-08402-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 07/09/17
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Stephen Chase filed a timely appeal from the August 8, 2017, reference 03, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on the claims deputy's conclusion that Mr. Chase was discharged on July 13, 2017 for conduct not in the best interest of the employer. After due notice was issued, a hearing was held on September 5, 2017. The hearing in this matter was consolidated with the hearing in Appeal Number 17A-UI-08403-JTT. Mr. Chase participated. On September 1, 2017, the employer registered a telephone number for the hearing and named Julie Liechty as the employer's representative for the hearing. At the time of the hearing, the administrative law judge made three attempts to reach Ms. Liechty at the number the employer had registered for the hearing. On each attempt, no one answered and there was answering machine where a message could be left. Exhibit A was received into evidence. 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: Stephen Chase was employed by Wal-Mart Stores, Inc. as a full-time "Unloader DAR 4" at the employer's distribution center in Mount Pleasant from July 2016 until July 13, 2017, when Jim Peterson, 4th Shift Supervisor for Receiving, discharged him from the employment for failure to meet the employer's hourly production quota. Mr. Chase's work hours were 5:30 a.m. to 6:00 p.m., Saturday, Sunday and Monday. Mr. Chase assisted with unloading freight trailers and then reloading freight for shipment to the employer's stores. Mr. Chase was required to process a particular number of boxes per hour. Mr. Chase worked diligently and to the level of his ability, but fell short of the employer's production expectations. Mr. Chase was aware that some employees who could not meet the unloading quota were allowed to move to other areas within the distribution center. Mr. Chase spoke to his supervisors to request such a move, but

his request was not granted. On July 13, 2017, the employer summoned Mr. Chase to a meeting and discharged Mr. Chase 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 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 did not make a representative and/or witness available for the appeal hearing and did not present any evidence to prove, by a preponderance of the evidence, a discharge based on misconduct in connection with the employment. The evidence in the record does not indicate misconduct in connection with the employment. Instead, the evidence in the record indicates a discharge based on Mr. Chase's inability to perform to the satisfaction of the employer despite his good faith effort to perform to the employer's satisfaction. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Chase was discharged for no disqualifying reason. Accordingly, Mr. Chase is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The August 8, 2017, reference 03, decision is reversed. The claimant was discharged on July 13, 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/rvs