

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFFREY A THOMPSON
Claimant

APPEAL NO. 14A-UI-04951-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN ORDNANCE LLC
Employer

OC: 12/29/13
Claimant: Appellant (2-R)

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

STATEMENT OF THE CASE:

Jeffrey Thompson filed a timely appeal from the May 8, 2014, reference 03, decision that disqualified him for benefits and that relieved the employer of liability for benefits based on an agency conclusion that Mr. Thompson had been discharged for misconduct in connection with the employment. A hearing was scheduled for June 2, 2014 and both parties were duly notified by notice mailed on May 16, 2014. Both parties elected to participate in writing in lieu of appearing personally for the telephonic hearing. The claimant's written statement was received into the record as Exhibit A. The employer's resubmission of the completed notice of claim/protest indicating the employer did not protest the claim was received into the record as Exhibit One. The administrative law judge took official notice of the documented submitted for and generated in connection with the May 7, 2014 fact-finding interview.

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: Jeffrey Thompson was employed by American Ordnance, L.L.C., as a full-time driver from November 2013 until April 22, 2014, when he was discharged from the employment. The employer contracts with the United States Government. Mr. Thompson's employment was subject to approval by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). The employer severed the employment relationship when the employer and Mr. Thompson received notice from the ATF that Mr. Thompson was not approved to perform work for the U.S. Government. The decision that Mr. Thompson was not approved to perform work for the U.S. Government was based on something in his background from decades prior to the employment. The employer left open the possibility of Mr. Thompson returning to the employment at some future date in the event he could persuade the ATF to reverse its decision and approve him to perform work for the U.S. Government.

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 in the record establishes that the discharge was based on conduct that predated the employment by decades. The evidence does not establish any willful failure to disclose that conduct to the employer in connection with the employment. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Thompson was discharged for no disqualifying reason. Accordingly, Mr. Thompson is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

Mr. Thompson stated in his appeal letter that he could not appear for an appeal hearing because he had started new, full-time employment, with work hours of 6:00 a.m. to 4:00 p.m., Monday through Thursday, and mandatory overtime on Friday. In connection with the May 7, 2014, fact-finding interview, Mr. Thompson had told Workforce Development that the new employment had started on May 5, 2014. The administrative law judge notes that despite reporting new, full-time employment, Mr. Thompson has been making consecutive weekly claims for benefits since he established the additional claim that was effective April 20, 2014. This matter will be remanded to the Benefits Bureau for determination of whether Mr. Thompson has met the work availability requirement since he established the additional claim for benefits.

The administrative law judge would counsel the claimant against use of profanity in future correspondence with the agency.

DECISION:

The claims deputy's May 8, 2014, reference 03, decision is reversed. The claimant was discharged on April 22, 2014, for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

This matter is remanded to the Benefits Bureau for determination of whether the claimant has met the work availability requirement since he established the additional claim for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs