

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

MARK B MULLEN
Claimant

APPEAL NO. 22A-UI-10643-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCHIEFFER CO INTERNATIONAL LC
Employer

**OC: 03/27/22
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

On April 27, 2022, the employer filed a timely appeal from the April 19, 2022 (reference 01) decision that allowed benefits to the claimant, provided the claimant was otherwise eligible, and that held the employer's account could be charged for benefits, based on the deputy's conclusion the claimant was discharged on March 29, 2022 for no disqualifying reason. After due notice was issued, a hearing commenced on June 27, 2022 and concluded on June 28, 2022. Mark Mullen (claimant) participated. Craig Schroeder represented the employer and presented additional testimony through Larry Huinker. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant (DBRO) and received Exhibits 1 through 5 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.

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: Mark Mullen (claimant) was employed by Schieffer Company International, L.C. as a full-time Production Manager from May 2021 until March 29, 2022, when Larry Huinker, Plant Manager, discharged him from the employment. Mr. Huinker was the claimant's immediate supervisor.

The final incident that triggered the discharge occurred on the morning of March 29, 2022 and concerned a heated exchange between the claimant and a subordinate production supervisor on the production floor. The exchange occurred in the presence of other subordinates. The subordinate supervisor approached the claimant in an agitated state and initiated the heated exchange regarding the supervisor's belief that he was too busy to cross-train employees during this shift. The claimant did not have the presence of mind to take the conversation to a private area and instead responded in kind. Though both participants yelled, neither participant used profanity or demeaning comments. The exchange caught the attention of others working in the

area. Multiple employees alerted Mr. Huinker to the incident after Mr. Huinker arrived to begin his work day. The employer faulted the claimant for not handling the matter in a discreet, professional manner, for not pulling the supervisor into an office for a private discussion. Shortly after the heated exchange, the claimant considered that he had not handled the interaction appropriately and apologized to the supervisor involved in the heated exchange. When Mr. Huinker summoned the claimant to discuss the matter, the claimant apologized to Mr. Huinker of his handling of the incident. There had been no prior similar heated exchanges with subordinates.

In March 2022, the employer had placed the claimant on a performance improvement plan in response to concerns regarding the claimant's ability to motivate and communicate effectively with his subordinates. The employer was concerned about declining morale and productivity in the department the claimant supervised. A number of the claimant's subordinates had met with the human resources manager as a group to bring forward their concerns about the claimant's manner of communicating with subordinates. The human resources manager did not seek input from the claimant regarding the subordinates' concerns. The decline in morale followed the claimant's discharge of multiple employees with the employer's approval. The claimant had come to the employment with a production supervision background the employer thought would have provided the claimant the skillset to motivate and effectively communicate with subordinates. In connection with the implementing the performance improvement plan, the employer had reassigned some of the claimant's duties so that the claimant could focus on improving communications, morale and productivity amongst his team. In response to the to the personal improvement plan, the claimant prepared on his own initiative a set of goals that included improved communication with subordinates. After the employer placed the claimant on the performance improvement plan, Mr. Huinker met with the claimant for weekly reviews and noted the claimant's progress. During the meeting that following the March 29, 2022 heated exchange with the subordinate, Mr. Huinker opined that the claimant had that morning fundamentally undermined the previous progress in improving communications with subordinates.

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

The evidence in the record establishes legitimate employer concerns regarding the need for constructive, motivating communication within the workplace. The evidence does not indicate conduct on the part of the claimant that rises to the level the willful or wanton disregard of the employer's interests. An employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. *Henecke v. Iowa Department of Job Service*, 533 N.W.2d 573 (Iowa App. 1995). However, here we have an isolated heated exchange, an error in judgment, rather than a refusal to behave decently. The claimant was aware of the employer's concerns regarding communication and declining morale. The claimant had committed to work on those issues. In the heat of the moment on March 29, 2022, the claimant made an error in judgment and mishandled the interaction with the agitated subordinate supervisor, such that the claimant contributed to the workplace disruption. The claimant realized and acknowledged to the subordinate and the employer that he had erred in the matter. The employer elected to cut its losses, rather than further invest in improving the claimant's skillset. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes he claimant was discharged for no disqualifying reason.

Accordingly, the claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The April 19, 2022 (reference 01) decision is AFFIRMED. The claimant was discharged on March 29, 2022 for no disqualifying reason. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.



James E. Timberland
Administrative Law Judge

September 6, 2022
Decision Dated and Mailed

jet/kmj

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de