

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH L BELCHER
Claimant

APPEAL NO. 17A-UI-04693-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 04/09/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Joseph Belcher filed a timely appeal from the April 28, 2017, reference 02, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on the claims deputy's conclusion that Mr. Belcher had been discharged on April 4, 2017 for misconduct in connection with the employment, loafing on the job. After due notice was issued, a hearing was held on May 22, 2017. Ms. Belcher participated. James Tranfaglia of Corporate Cost Control represented the employer and presented testimony through Chad Master and Jamie Aulwes. Exhibits 1, 2, 3 and A were received into evidence.

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: Joseph Belcher was employed by Hy-Vee, Inc. as a full-time Warehouse Order Selector from 2006 until April 4, 2017, when Chad Masters, Director of Perishables, and Matt Beenblossom, Vice President of Distribution, discharged him for loafing on the job. Mr. Belcher's work hours were 5:30 p.m. to 3:30 a.m., Thursday through Sunday. Mr. Belcher received scheduled breaks during his shift. The first break was a paid 20-minute break at 8:30 p.m. The second break was a paid 10-minute break at midnight. The third break was a paid 10-minute break at 2:00 a.m. The employer provided a designated break area.

On April 4, 2017, a third-party cleaning vendor sent an email message alerting Mr. Masters that employees appeared to be sleeping in the banana storage area. The third-party vendor had waited in the area an extended period for assistance with moving some items that needed to be moved in order for the cleaning crew to do its job. Mr. Masters obtained video surveillance of the area in question. The surveillance documented Mr. Belcher taking several unauthorized breaks in a secret area that another employee had constructed in the banana storage area out of booths that were standing on end and arranged in a U. When employees were seated within this unauthorized break area, they were not visible to others entering the area. On March 23,

2017, Mr. Belcher was in the booth for 16 minutes for an unauthorized break. On April 1, 2017, Mr. Belcher was in the booth for 44 minutes on an unauthorized break. On April 3, 2017, Mr. Belcher was in the booth for 30 minutes for an unauthorized break. On April 4, Mr. Belcher was in the booth for one hour and 42 minutes on an unauthorized break. When the employer interviewed Mr. Belcher regarding the conduct, Mr. Belcher admitted to taking the unauthorized breaks. The employer discharged Mr. Belcher and other employees, including supervisors, in connection with the unauthorized break area and unauthorized breaks.

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 Mr. Belcher knowingly and intentionally acted contrary to the employer's interests by repeatedly taking unauthorized breaks in a covert, makeshift, unauthorized break area at times when he was being paid to perform work on behalf of the employer. The willful and wanton disregard for the employer's interests is best illustrated by the hour and 42 minute unauthorized break on April 4, 2016. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Belcher was discharged for misconduct in connection with the employment. Accordingly, Mr. Belcher is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Belcher must meet all other eligibility requirements. The employer's account shall not be charged.

DECISION:

The April 28, 2017, reference 02, decision is affirmed. The claimant was discharged on April 4, 2017 for misconduct in connection with the employment, loafing on the job. The claimant is disqualified for unemployment benefits until he has worked in and paid wages for insured work equal to ten times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs