IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

CURTIS D TRUELSEN
Claimant

TASLER PALLET & LUMBER INC
Employer

APPEAL NO. 09A-UI-17934-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03/29/09
Claimant: Appellant (5)

Iowa Code section 96.5(2)(a) - Discharge

STATEMENT OF THE CASE:

Curtis Truelsen filed a timely appeal from the November 25, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on January 11, 2010. Mr. Truelsen participated. Butch Kent, Human Resources Manager, represented the employer. Exhibits One, Two, Three and A through E were received into evidence.

ISSUE:

Whether the claimant separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Curtis Truelsen was employed by Tasler Pallet & Lumber, Inc., as a full-time production worker from September 2007 and last performed work for the employer on Friday, October 23, 2009. On October 23, 2009, Mr. Truelsen hit a coworker with a 2" x 4" board. The assaultive behavior was unprovoked and not in self-defense. In response to the incident, Mr. Truelsen's immediate supervisor directed Mr. Truelsen to go home and "take care of" his medication. The supervisor was aware that Mr. Truelsen was prescribed psychotropic medications. Though Mr. Truelsen was not out of medications, he complied with the supervisor's directive to leave. The supervisor did not tell Mr. Truelsen that he was discharged from the employment.

Mr. Truelsen has been diagnosed with bipolar disorder with psychotic features. Mr. Truelsen is prescribed Lithium, Risperdal, and Zoloft. Mr. Truelsen appears to have had a psychotic episode after he left the workplace on October 23, 2009

Mr. Truelsen was next schedule to work on Monday, October 26. Mr. Truelsen was next scheduled to see his psychiatrist and obtain new prescriptions on November 13, 2009. Prior to seeing his doctor, Mr. Truelsen had received COBRA materials concerning continuing his health insurance and assumed he had been discharged from the employment. Mr. Truelsen did not return to the employment or make further contact with the employer. The employer had a written policy that deemed three absences without notifying the employer to be a voluntary quit.

Mr. Truelsen had received a copy of the policy. The employer had concluded Mr. Truelsen had voluntarily quit the employment after he failed to appear for four consecutive workdays.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

A person who is absent three consecutive workdays without notifying the employer in violation of the employer's established policy is presumed to have voluntarily quit the employment without good cause attributable to the employer. See 871 IAC 24.25(4).

In considering an understanding or belief formed, or a conclusion drawn, by an employer or claimant, the administrative law judge considers what a reasonable person would have concluded under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993).

The weight of the evidence indicates that the supervisor initiated the separation from the employment when he told Mr. Truelsen to go home and attend to his medication. Since Mr. Truelsen was not out of medication and was taking his medication, Mr. Truelsen reasonably concluded he was not to return to the employment until after he saw his doctor. By that time, Mr. Truelsen had received documentation that indicated the employment had terminated. Mr. Truelsen had not indicated a desire to leave the employment. The supervisor's directive that Mr. Truelsen leave until he attended to his medication constitutes sufficient evidence to overcome the presumption of a voluntary quit based on the four consecutive no-call, no-show absences. Mr. Truelsen reasonably concluded that he had been discharged from the employment.

Iowa Code section 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.

871 IAC 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.

The employer has the burden of proof in a discharge 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).

An employee who engages in a physical altercation in the workplace, regardless of whether the employee struck the first blow, engages in misconduct where the employee's actions are not in self-defense or the employee failed to retreat from the physical altercation. See Savage v. Employment Appeal Board, 529 N.W.2d 640 (Iowa App. 1995).

The evidence indicates that the supervisor sent Mr. Truelsen home in direct response to Mr. Truelsen's assault of another employee with a board. Mr. Truelsen's conduct was unprovoked and not in self-defense. The conduct constituted misconduct in connection with the employment. Mr. Truelsen was discharged for misconduct in connection with the employment. Mr. Truelsen is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Truelsen.

DECISION:

The Agency representative's November 25, 2009, reference 01, decision is modified as follows. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The employer's account will not be charged.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

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