

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARK R WILLIAMS
Claimant

JC TOLAND PAINTING LLC
Employer

APPEAL 19A-UI-08647-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 10/06/19
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Claimant filed an appeal from the October 24, 2019 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on November 26, 2019, at 11:00 a.m. Claimant participated. Employer participated through Bob Seitz. Claimant's Exhibit A was admitted.

ISSUE:

Whether claimant's separation was a discharge due to disqualifying job-related misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time foreman from May 2014 until his employment with JC Toland Painting, LLC ended on October 11, 2019. (Claimant Testimony) Claimant was discharged on October 11, 2019 for conduct that occurred between April 10, 2019 and April 20, 2019 and that employer became aware of on August 29, 2019. (Seitz Testimony) After becoming aware of the conduct, employer did not tell claimant that it was grounds for discharge or that his job was in jeopardy. (Claimant Testimony) Other employees were involved in the same conduct as claimant but were not discharged. (Seitz Testimony) Claimant had no prior warnings for the conduct that resulted in his discharge. (Seitz Testimony)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); accord *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) *Past acts of misconduct.* While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge cannot be based on such past act or acts. The termination of employment must be based on a current act.

Conduct asserted to be disqualifying misconduct must be current. *West v. Emp't Appeal Bd.*, 489 N.W.2d 731 (Iowa 1992); *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988). Whether the act is current is measured by the time elapsing between the employer's awareness of the misconduct and the employer's notice to the employee that the conduct provides grounds for dismissal. *Id.* at 662.

Two months elapsed between employer learning of claimant's conduct and employer discharging claimant for that conduct. The conduct for which claimant was discharged was no longer a current act. Employer has not met its burden of proving a current act of disqualifying job-related misconduct. Furthermore, to the extent that claimant was subject to disparate discipline, his conduct cannot support a disqualification from unemployment benefits. Claimant was discharged for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The October 24, 2019 (reference 01) unemployment insurance decision is reversed. Claimant was discharged for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Adrienne C. Williamson
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Decision Dated and Mailed

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