

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RYAN P MEYER
Claimant

APPEAL NO. 14A-UI-02311-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC
Employer

**OC: 01/26/14
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Ryan Meyer filed a timely appeal from the February 20, 2014, reference 01, decision that disqualified him for unemployment insurance benefits. After due notice was issued, a hearing was held on March 24, 2014. Mr. Meyer participated and provided additional testimony through his parents, Stephen Meyer and Kathy Meyer. Sarah Fiedler represented the employer. Exhibits One through Four were received into evidence.

ISSUE:

Whether the claimant separated from the employment for reason that disqualifies him for unemployment insurance benefits or that relieves the employer of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ryan Meyer performed work for Winegard Company in Burlington through multiple work assignments. The work involved computer-based research and debugging of computer software. The nature of the work made it possible for Mr. Meyer to perform the work from a remote computer without being physically present at the Winegard facility in Burlington. The employment was structured such that Team Staffing Solutions was the employer and Winegard Company was merely a client of Team Staffing Solutions. Throughout the period of employment, Mr. Meyer had minimal contact with Team Staffing Solutions and interacted primarily with Winegard.

Mr. Meyer began his most recent assignment at Winegard in January 2012. The assignment was supposed to be full-time. The work hours were supposed to be 8:00 a.m. to 4:30 p.m., Monday through Friday. Mr. Meyer's wage was \$12.00 per hour, \$480.00 per week. Dean Kostan, a manager of research and development at Winegard, functioned as Ryan Meyer's primary supervisor. Mr. Kostan is officed in Illinois and makes periodic trips to the Burlington facility. Mr. Meyer's father, Stephen Meyer, works as a professional engineer for Winegard. Stephen Meyer functioned as Ryan Meyer's supervisor in Mr. Kostan's absence. Stephen Meyer is officed in Burlington. Ryan Meyer would usually report his work hours to Stephen Meyer and Stephen Meyer would approve the work hour submission.

Ryan Meyer last performed work and/or submitted a work progress update to Winegard in late November or early December 2013. Ryan Meyer knew that he was required to provide weekly or bi-weekly work progress updates to Mr. Kostan via an electronic work tracking system. Ryan Meyer missed a scheduled meeting with Mr. Kostan in mid-December. The meeting was to occur at the Burlington facility. Mr. Meyer was living in Ames at the time and did not make it to the meeting due to a motor vehicle issue. Stephen Meyer notified Mr. Kostan of Ryan Meyer's need to be absent from the meeting. Though Ryan Meyer was not performing any work for the employer and was not reporting any work progress to the employer beyond the end of November or beginning of December 2013, Ryan Meyer continued to report having worked full-time hours and continued to collect pay for full-time work. Ryan Meyer most recently submitted work hours for the period of January 6-10, 2014, and at that time reported having worked 40 hours.

On January 16, 2014, Winegard notified Team Staffing Solutions via email that Winegard was ending the assignment. On that same day, a Team Staffing Solutions representative, Heidi Rios, left a voice mail message for Mr. Meyer indicating that the assignment was ended. The next contact between Ryan Meyer and Team Staffing Solutions occurred on January 29, 2014, when the employer contacted Mr. Meyer to make certain he had returned Winegard's equipment to that company.

REASONING AND CONCLUSIONS OF LAW:

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 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 a discharge based on negligence and dishonesty. Ryan Meyer dishonestly continued to claim full-time work hours and wages until January 2014, though he had not performed any work for Winegard, and had not updated Winegard regarding any work performed, since the end of November or beginning of December 2013. Mr. Meyer knew that he was required to provide Winegard with regular work progress reports and that he was actually supposed to be performing work during the hours he reported to the employer as hours worked. Mr. Meyer’s failure to maintain appropriate contact with Winegard for more than a month indicated a pattern of ongoing negligence that was in willful disregard of the Winegard’s interests, and by extension, the interests of the actual employer, Team Staffing Solutions. Mr. Meyer’s submission of bogus work hours for remuneration for more than a month, when he had not actually done any work during that period, indicated intentional dishonesty and timecard fraud.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Meyer was discharged for misconduct. Accordingly, Mr. Meyer 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.

DECISION:

The Claims Deputy's February 20, 2014, reference 01, decision is affirmed. 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 shall not be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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