

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FRED RUDNITZKI

Claimant

APPEAL NO. 07A-UI-03769-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MONONA WIRE CORP

Employer

**OC: 02/25/07 R: 04
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Fred Rudnitzki filed a timely appeal from the April 4, 2007, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on April 30, 2007. Mr. Rudnitzki participated. Sara Smith, Human Resources Assistant, represented the employer. The administrative law judge received Exhibits One, Two and Three into evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Fred Rudnitzki was employed by Monona Wire Corporation as a full-time Braid Operator from August 2006 until February 12, 2007, when Lalene Hansell, Second-shift Supervisor, and Carla Harris, Production Manager, discharged him.

The employer's decision to discharge Mr. Rudnitzki was based on the employer's belief that Mr. Rudnitzki had failed to clock in February 8, 2007. On that date, Mr. Rudnitzki appeared for work on time. In order to clock in, Mr. Rudnitzki had to slide his credit card-like time card through a slot on the time clock. Mr. Rudnitzki swiped his card on the day in question, but the time clock did not record his clock in information. At the end of the week, the employer reviewed the time clock information and concluded that Mr. Rudnitzki had failed to clock in on February 8. Mr. Rudnitzki had not previously failed to clock in or out. Mr. Rudnitzki had received no prior warnings for negligence or carelessness. The employer includes failure to properly clock in or out as a violation to which attendance points attach. Mr. Rudnitzki's most recent absence had been on January 11, 2007. Even though the employer knew Mr. Rudnitzki had arrived at work on time on February 8, the employer discharged Mr. Rudnitzki for exceeding the allowable number of attendance points.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 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 greater weight of the evidence in the record establishes that the final act that prompted the discharge had little to do with attendance and more to do with the employer's belief that Mr. Rudnitzki had neglected to use the time clock on one occasion. Because the final incident was not an absence, it would be inappropriate for the administrative law judge to analyze the matter as a discharge for excessive unexcused absences. The greater weight of the evidence indicates that Mr. Rudnitzki did in fact use the time clock on February 8. Accordingly, the evidence fails to establish a "current act" of misconduct. See 871 IAC 24.32(8). Even if Mr. Rudnitzki neglected to use the time clock on February 8, the evidence indicates that this was an isolated instance of ordinary negligence. See 871 IAC 24.32(1)(a). The evidence would still fail to establish recurrent negligence and/or carelessness rising to the level of misconduct.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Rudnitzki was discharged for no disqualifying reason. Accordingly, Mr. Rudnitzki is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Rudnitzki.

DECISION:

The Agency representative's April 4, 2007, reference 02, decision is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css