

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVEN W MOHR
Claimant

APPEAL NO. 15A-UI-03492-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ECONOMY COATING SYSTEMS INC
Employer

OC: 02/22/15
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Steven Mohr filed a timely appeal from the March 10, 2015, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that Mr. Mohr had been discharged on February 26, 2015 for conduct not in the best interests of the employer. The appeal hearing was postponed twice due to issues related to a proposed digital exhibit submitted by the employer. The hearing was postponed a third time, when the employer representative/witness failed to appear for the hearing on May 8, 2015. The administrative law judge thereafter attempted to reschedule the hearing by agreement for May 13, 2015 at 3:45 p.m. The claimant and his attorney, Matthew Noel, agreed to appear at that time. On May 13, 2015, the employer provided written notice that it was waiving its participation in the hearing. The employer confirmed its decision to waive participation in the appeal hearing during a recorded telephone call between the administrative law judge and Robin Jenco-Marcusi, Treasurer/Human Resources. The hearing went forward on May 13, 2015 with the claimant and his attorney participating. Exhibit Four was 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: Steven Mohr was employed by Economy Coating Systems, Inc. as a full-time laborer from June 2014 until February 26, 2015; when Robin Jenco-Marcusi, Treasurer/Human Resources, discharged Mr. Mohr from the employment. The conduct that triggered the discharge concerned inaccurate project timekeeping records that Mr. Mohr had generated that day. At the start of the day, a supervisor had given Mr. Mohr a list of duties to perform in an area different than Mr. Mohr's usual work area. Mr. Mohr performed the duties but did not document time spent on the duties as he performed the tasks. Mr. Mohr believed he would need to return to his work area after completing each task to note the time of completion and the time he started the next task. Mr. Mohr concluded that his approach saved time. Mr. Mohr did not act with the intention of deceiving the employer. Later in the day, Mr. Mohr estimated the times he had spent on the various projects. Mr. Mohr told the supervisor that he had estimated the times.

Mr. Mohr would not ordinarily estimate the times spent on assigned projects. The employer compared the times documented by Mr. Mohr to surveillance records and concluded they did not match. The employer met with Mr. Mohr later in the day and notified him that he was discharged from the employment based on the discrepancy between his project times he had documented that day and the employer's surveillance record. Mr. Mohr had not received prior warnings for erroneous record keeping.

After the employer had notified Mr. Mohr that he was discharged and as Mr. Mohr was leaving the workplace, the employer added that the employer had also considered an extended break that Mr. Mohr had taken that morning. The break was supposed to be 20 minutes but Mr. Mohr was away from his work area for 24 minutes. The designated break area was a substantial distance from Mr. Mohr's work area. Mr. Mohr considered the break to have started when he reached the break area. Mr. Mohr had not been previously warned for extended 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 employer waived its participation in the hearing. The employer did not present any evidence to support the allegation that Mr. Mohr was discharged in connection with the employment. The evidence in the record establishes careless timekeeping on February 26, 2015. The evidence in the record fails to establish an intention to deceive the employer or a pattern of careless timekeeping. The evidence establishes a minor break violation on the final day, but no prior similar conduct or warnings for similar conduct. The evidence in the record fails to establish conduct that rises to the level of misconduct in connection with the employment that would disqualify Mr. Mohr for unemployment insurance benefits. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Mohr was discharged for no disqualifying reason. Accordingly, Mr. Mohr is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Mohr.

DECISION:

The March 10, 2015, reference 01, 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

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