IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MICHAEL J SHULTZ
Claimant

AG PROCESSING INC A COOPERATIVE
Employer

APPEAL NO. 17A-UI-08142-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/09/17
Claimant: Respondent (2)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct
Iowa Code Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 4, 2017, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on the claims deputy's conclusion that the claimant was discharged on June 12, 2017 for no disqualifying reason. After due notice was issued, a hearing was held on August 29, 2017. Claimant Michael Schultz did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. David Williams of Equifax represented the employer. Mr. Williams testified and presented additional testimony through Shannon Hett, Derek Marth, James "J.D." Williams, and Sandy Mason. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant. The administrative law judge took official notice of the fact-finding materials and labeled them a Department Exhibits D-1 through D-7.

ISSUES:

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

Whether the claimant was overpaid unemployment insurance benefits.

Whether the claimant must repay benefits.

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Michael Shultz was employed by Ag Processing, Inc., as a full-time material handler from April 2016 until June 12, 2017, when Shannon Hett, Production Manager, discharged him from the employment for neglect of duties and dishonesty. Mr. Shultz's immediate supervisor was Ryan Boeckholt, Shift Supervisor. Mr. Boeckholt reports to Derek Marth, Plant Superintendent, who in turn

reports to Mr. Hett. Mr. Shultz's primary material handler duties involved loading meal car truck trailers and rail cars with soybeans.

The employer provided Mr. Shultz with the employer's written plant rules at the start of the employment. The plant rules included a provision that subjected employees to potential discharge from the employment for neglect of assigned duties and/or failure to follow job procedures to meet quantity and quality work standards. The plant rules also subjected employees to discharge for dishonesty.

The final incident that triggered the discharge occurred on June 11, 2017. On that day, Mr. Shultz was assigned to load rail cars. When Mr. Marth reviewed the car weights on June 12, he noticed that two rail cars loaded by Mr. Shultz were under the goal weight of 285,000 pounds. The goal in loading the cars was to fill them as full as possible. To fill the cars as full as possible, Mr. Shultz was required to manually shovel soybeans that had been machine-loaded into the rail car to distribute the beans and make space for additional beans to be machine-loaded into the freight car. Under the employer's protocol, Mr. Shultz was required to sign a form and summon a manager if he was unable to fill the rail car to at least 282,000 pounds. After reviewing the rail car weights on June 12, Mr. Marth spoke with Mr. Shultz. Mr. Marth asked Mr. Shultz whether he had shoveled the two rail cars in question and why he was not able to get the required weight of beans in the rail cars. Mr. Shultz told Mr. Marth that he had indeed shoveled the rail cars. Mr. Shultz then reviewed surveillance video that showed Mr. Shultz had not in fact shoveled the beans in either rail car. The employer concluded that Mr. Shultz had intentionally machine-filled the rail cars to get them to 282,000 pounds, heavy enough to where he would not need to summon a supervisor and so they would not at that time be checked by the supervisor to determine whether they had been shoveled. Based on Mr. Shultz's dishonest assertion that he had shoveled the rail cars when he had not, and based on a January 2017 incident wherein Mr. Shultz did not fill cars to the required weight, Mr. Hett decided to discharge Mr. Shultz from the employment. When the employer spoke to Mr. Shultz on January 12, 2017 regarding the failure to fill cars to the proper weight at that time, the employer specifically instructed Mr. Shultz to shovel the cars when filling them.

Mr. Shultz established a claim for benefits that was effective July 9, 2017. Ag Processing is the sole base period employer. Mr. Shultz received $2,275.00 in benefits for the five-week period of July 9, 2017 through August 12, 2017.

On August 21, 2017, a Workforce Development claims deputy held a fact-finding interview to address Mr. Shultz's separation from the employment. Phyllis Farrell of Equifax represented the employer at the fact-finding interview and provided a verbal statement to the claims deputy. In addition, the employer submitted relevant documentation from the employer for the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)a provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
>
> 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:

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 evidence in the record establishes misconduct in connection with the employment based on Mr. Shultz's intentional dishonesty by word and deed. The weight of the evidence establishes that Mr. Shultz elected not to follow the shoveling protocol in connection with loading at least two rail cars on June 11, 2017. The weight of the evidence supports the employer's assertion

that Mr. Shultz intentionally loaded the two cars just enough to avoid immediate scrutiny of the loads and detection that he had not shoveled the loads. The evidence also establishes that Mr. Shultz was intentionally dishonest when he told Mr. Marsh that he had shoveled the beans in both cars in question. The evidence establishes negligence, but not a pattern of negligence. Mr. Shultz's dishonesty demonstrated intentional and substantial disregard of the employer's interests.

Because the administrative law judge concludes that Mr. Shultz was discharged for misconduct in connection with the employment, Mr. Shultz is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Shultz must meet all other eligibility requirements.

The unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later deemed ineligible benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)(a) and (b).

Mr. Shultz received $2,275.00 in benefits for the five-week period of July 9, 2017 through August 12, 2017, but is by this decision disqualified for those benefits. Accordingly, Mr. Shultz is overpaid $2,275.00 in benefits for the five-week period of July 9, 2017 through August 12, 2017. Because the employer participated in the fact-finding interview within the meaning of the law, Mr. Shultz is required to repay the overpaid benefits. The employer's account is relieved of liability for benefits, including liability for benefits already paid to the claimant.

DECISION:

The August 4, 2017, reference 01, decision is reversed. The claimant was discharged on June 12, 2017 for misconduct in connection with the employment. 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 amount. The claimant must meet all other eligibility requirements. The claimant is overpaid $2,275.00 for the five-week period of July 9, 2017 through August 12, 2017. The claimant must repay the overpaid benefits. The employer's account is relieved of liability for benefits, including liability for benefits already paid to the claimant.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs