

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT V SHANNON
Claimant

APPEAL NO. 14A-UI-09496-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COLLINS MAUS LLC
Employer

OC: 08/03/14
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 5, 2014, reference 04, decision that allowed benefits to the claimant, provided he was otherwise eligible, and that held the employer's account could be charged based on an Agency conclusion that the claimant was discharged for no disqualifying reason. After due notice was issued, a hearing was held on October 2, 2014. Robert Shannon did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Mary Collins represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits One through Eight into evidence. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview.

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: Robert Shannon was employed by Collins Haus, L.L.C. as a part-time cook until August 1, 2014 when Kevin Steeber, Kitchen Manager, discharged him from the employment for allegedly being under the influence of a controlled substance and for alleged poor work performance. Mr. Steeber and Xavier Lire, the assistant kitchen manager, were Mr. Shannon's immediate supervisors. The incident that prompted the discharge occurred on July 31, 2014. On that day, Mr. Shannon was moving slower than usual when performing his work. The management staff and some coworkers suspected that Mr. Shannon might be under the influence of a controlled substance. The employer does not have a drug testing policy. The employer did not ask Mr. Shannon whether he had taken a controlled substance or conduct. Aside from the fact that Mr. Shannon appeared to be moving more slowly than normal, the management staff did not observe any conduct on the part of Mr. Shannon that suggested that he was under the influence of a controlled substance, rather than simply tired. Mr. Lire sent Mr. Shannon home early on July 31, 2014. The next day, Mr. Steeber notified Mr. Shannon that he was discharged from the employment.

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 has presented insufficient evidence to establish misconduct in connection with the employment. The employer's sole witness was owner Mary Collins. Ms. Collins' interaction with Mr. Shannon on the evening in question was limited to asking Mr. Shannon what was going on. Mr. Shannon had responded that he was doing his best. The employer elected not to present testimony from other employees who allegedly observed other behavior suggesting that Mr. Shannon might be under the influence of a controlled substance. The employer elected instead to submit cursory unsworn statements containing allegations of misconduct. The allegations of misconduct in the unsworn statements do not rise to the level of proof that Mr. Shannon was under the influence of a controlled substance, or that his work performance demonstrated willful misconduct or a pattern of carelessness or negligence.

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

DECISION:

The claims deputy's September 5, 2014, reference 04, decision is affirmed. 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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