

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERIC BRYANT
Claimant

APPEAL NO. 14A-UI-12366-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TPI IOWA LLC
Employer

OC: 11/02/14
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Eric Bryant filed a timely appeal from the November 20, 2014, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits; based on an Agency conclusion that Mr. Bryant was discharged for insubordination. After due notice was issued, a hearing was held on December 18, 2014. Mr. Bryant participated and presented additional testimony through James Walker. Danielle Williams, Human Resources Coordinator, represented the employer.

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: Eric Bryant was employed by TPI Iowa, L.L.C. as a full-time laborer in the employer's paint and preparation area from 2012 until November 6, 2014 when the employer discharged him for alleged insubordination. Toward the end of the employment, Mr. Bryant's work hours were changed from 6:00 p.m. to 6:00 a.m. to 10:00 p.m. to 6:00 a.m. Toward the end of the employment, the employer transferred the overnight shift manager and put Shift Manager Barb Sinnott in charge of the overnight shift. During the shift, Mr. Bryant would usually report directly to a Team Lead.

The conduct that factored in the discharge is alleged to have occurred during the overnight shift of November 4-5 and at a meeting on November 6, 2014. At some point during the overnight shift on November 4-5, Mr. Bryant's work area was waiting for delivery of another wind turbine blade so they could perform their work on it. The team lead directed Mr. Bryant to get his sander hooked up while they were waiting for the blade. Mr. Bryant did not move fast enough to satisfy the team lead. Ms. Sinnott stepped in to issue a directive that Mr. Bryant get the blade and Mr. Bryant did not move fast enough to satisfy Ms. Sinnott. In connection with the same incident, Mr. Bryant initially did not set up his sander in the manner that Ms. Sinnott desired. Mr. Bryant was concerned that he would experience electric shock if he did. Toward the end of

the shift, Mr. Bryant stopped performing production duties and started to perform end-of-shift cleaning duties. It was standard practice to stop production work prior to the end of the shift and begin to perform clean up shift so that the employees could leave on time at 6:00 a.m. Ms. Sinnott approached Mr. Bryant and asked why he was stopping work. Mr. Bryant explained that a particular team lead usually had the employees stop production at 5:30 a.m. so that the employees could leave at 6:00 a.m. and avoid overtime work. Ms. Sinnott directed Mr. Bryant to continue performing production work until 5:45 a.m.

On November 6 Ms. Sinnott, Team Lead Jack Edwards, and Night Shift Human Resources Representative Denise Schmidt met with Mr. Bryant to discuss his alleged insubordination the night before. Mr. Bryant denied that he had been insubordinate and accused the employer of race-based hatred of him. Mr. Bryant is African-American. Mr. Bryant was not the only African-American employee to conclude that Ms. Sinnott targeted African-American employees in an effort to separate them from the employment. During the meeting on November 6 the employer notified Mr. Bryant that he would be suspended from the employment while the employer conducted further investigation into the alleged insubordination. The employer directed Mr. Bryant to leave the production plant and to not contact any TPI employees during the period of the suspension. Mr. Bryant lived in Des Moines and the workplace was in Newton. Mr. Bryant told the employer that he had carpooled with a coworker and would need to wait in the break room until the coworker was done working. That was unacceptable to the employer. The employer offered to provide Mr. Bryant with a cab. Mr. Bryant declined that offer and asserted that the employer wanted to put him out in the cold. The employer threatened to contact law enforcement to remove Mr. Bryant from the plant. After the meeting, the employer did indeed summon law enforcement and deemed Mr. Bryant 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) alone. 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).

Continued failure to follow reasonable instructions constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See Woods v. Iowa Department of Job Service, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See Endicott v. Iowa Department of Job Service, 367 N.W.2d 300 (Iowa Ct. App. 1985).

The employer failed to present sufficient evidence, and sufficiently direct and satisfactory evidence, to establish misconduct in connection with the employment based on insubordination or otherwise. The employer elected not to present testimony from a single witness with personal knowledge of the matters that factored in the discharge. The employer had the ability to present testimony from all of the supervisory, management, and human resources staff who were involved in the events leading to Mr. Bryant's separation from the employment. The employer has presented insufficient evidence to prove that Mr. Bryant unreasonably refused to comply with reasonable directives.

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

DECISION:

The November 20, 2014, 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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