

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JOHN C LAUMAN
47603 C-16
REMSSEN IA 51050

PER MAR SECURITY
AND RESEARCH CORP
PER MAR SECURITY SERVICES
C/O TALX EMPLOYER SVCS
PO BOX 1160
COLUMBUS OH 43216-1160

AMENDED

Appeal Number: 05A-UI-08085-JTT
OC: 07/10/05 R: 01
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

John Lauman filed a timely appeal from the July 29, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 22, 2005. Mr. Lauman participated. Field Supervisor Troy Kern represented the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: John Lauman was employed by Per Mar Security as a security officer from January 15, 2005 until July 11, 2005, when Site Supervisor Laurie Schnee discharged him for misconduct.

The final incident that prompted the discharge occurred on July 1, 2005, when Mr. Lauman failed to turn in a month computer graph of trucks entering the Wells Dairy facility, where he

was assigned. In May, the employer had assigned Mr. Lauman the duty of creating a monthly computer graph of trucks entering the Wells Dairy facility. The information had been requested by the administration of the Wells Dairy. Other security officers provided the necessary information to Mr. Lauman so that he could prepare the report. At the time the July 1 report came due, Mr. Lauman was on vacation for his wedding and honeymoon. Mr. Lauman had commenced the vacation on June 29 and did not return until July 8. The employer had approved the vacation. Neither Mr. Lauman nor his supervisor made any arrangements for submission of the report prior to Mr. Lauman's vacation. Mr. Lauman believed he needed to have complete information for the month prior to preparing the report. Information for June 29 and 30 was not available at the time Mr. Lauman commenced his vacation. Mr. Lauman assumed the employer would make other arrangements for the report while he was absent. The report would not take long to prepare once Mr. Lauman had complete information. After Mr. Lauman had been back at work on July 9-11 and still had not submitted the report for July 1, Site Supervisor Laurie Schnee discharged him for failing to submit the report.

The first monthly computer graph of trucks entering the Wells Dairy facility had been due on June 1. Mr. Lauman missed the June 1 deadline, but did submit the report sometime between June 2 and 5. The delay in submitting the report was attributable to questions Mr. Lauman had regarding how Well's Dairy wanted the report structured. Mr. Lauman was not allowed to communicate directly with the appropriate Well's Dairy personnel. Instead, Mr. Lauman sent e-mails to Ms. Schnee and did not receive timely responses. Ms. Schnee issued a verbal reprimand for the late submission of the June report.

Mr. Lauman had received a verbal warning on January 21, 2005, for driving around off-site of the Well's Dairy property and for putting excessive mileage on his assigned vehicle during his shifts. Mr. Lauman had received a written warning on April 10, 2005, for neglecting his duties after a coworker's vehicle was tampered with each time Mr. Lauman was assigned to the post that included responsibility for the security of the vehicle.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Lauman was discharged for misconduct in connection with his employment.

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).

Since Mr. Lauman was discharged, 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).

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).

Before the administrative law judge can find that an employee was discharged for misconduct, the evidence in the record must establish the existence of a "current act" of misconduct. See 871 IAC 24.32(8). The date on which the employee was informed his conduct provided grounds for dismissal, not the date of the discharge, is to be considered in determining whether the misconduct was a past or current act. See Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988)(Lapse of 4 days from final act until the claimant was notified that his conduct was grounds for dismissal, did not make final act a "past act").

The employer has failed to meet its burden of corroborating the allegation of misconduct. The employer presented no testimony regarding discussions that occurred between Ms. Schnee and Mr. Lauman with regard to the July 1 monthly report in anticipation of Mr. Lauman's absence from the workplace during June 29 through July 8. Site Supervisor Laurie Schnee did not testify. In addition, the evidence indicates that at the time Mr. Lauman was advised on July 11 that his neglect to submit the July 1 report subjected him to discharge, Mr. Lauman's failure to submit the July 1 report no longer constituted a "current act" of misconduct. Mr. Lauman's failure to submit the July 1 report came to the attention of Ms. Schnee on July 1. However,

Mr. Lauman was not advised that his failure to submit the July 1 report could subject him to discharge until July 11, the day he was actually discharged. Ms. Schnee was not merely waiting until Mr. Lauman returned from his vacation to discharge him. If that had been the case, Ms. Schnee would have discharged Mr. Lauman on July 9.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Lauman was discharged for no disqualifying reason. Accordingly, Mr. Lauman is eligible for benefits, provided he is otherwise eligible.

DECISION:

The Agency representative's decision dated July 29, 2005, reference 01, 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 for benefits paid to the claimant.

jt/kjw/pjs