

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CORY RYANT
Claimant

UNITED PARCEL SERVICE
Employer

APPEAL NO. 19A-UI-07793-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/01/19
Claimant: Respondent (4)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct
Iowa Administrative Code rule 871-24.32(9) – Suspension as Discharge
Iowa Code Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 26, 2019, reference 01, decision that held the claimant was eligible for benefits provided he met all other eligibility requirements and that employer's account could be charged for benefits, based on the Benefits Bureau deputy's conclusion that the claimant was discharged on August 28, 2019 for no disqualifying reason. After due notice was issued, a hearing was held on October 24, 2019. Claimant Cory Ryant participated. Josh Crosser represented the employer and presented additional testimony through Amy Venhorst. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1 through 4 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 and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

ISSUES:

Whether the claimant was suspended and/or 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 overpaid 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: Cory Ryant is employed by United Parcel Service (UPS) as a full-time package car driver. On August 22, 2019, the employer discharged Mr. Ryant from the employment for time-keeping fraud. On August 22, 23, 26, 27, and 28, 2019. Mr. Ryant documented that he had worked

more time than he had actually worked. He did this by documenting that he took shorter lunch breaks than he actually took. The employer investigated the time-keeping fraud by comparing Mr. Ryant's time-keeping record with the GPS record on Mr. Ryant's assigned delivery van and delivery transaction records. On August 28, 2019, the employer engaged in surveillance and directly observed Mr. Ryant taking a longer break than he documented in the time-keeping system. Subsequent to the August 29, 2019 discharge, the employer reinstated Mr. Ryant to the employment effective October 1, 2019 and thereby effectively transformed the discharge into a disciplinary suspension.

Mr. Ryant established an original claim for unemployment insurance benefits that was effective September 1, 2019. Mr. Ryant received \$518.00 in benefits for the week that ended September 14, 2019. Mr. Ryant received \$518.00 in benefits for the week that ended September 28, 2019. \$1,036.00 in total benefits were disbursed to Mr. Ryant. The employer is the sole base period employer.

On September 25, 2019, an Iowa Workforce Development Benefits Bureau deputy held a fact-finding interview that addressed Mr. Ryant's separation from the employment. Neither the employer nor the employer's representative of record participated in the fact-finding interview telephone call. The employer provided documentation for the deputy's consideration, but the documentation lacked the level of detail necessary to prove misconduct in connection with the employment. Mr. Ryant provided a verbal statement to the deputy in which Mr. Ryant intentionally misrepresented material facts. Mr. Ryant stated that he had "made a few mistakes" on his time card that "were not intentional." As the employer's investigation revealed, the time-keeping issues were not accidental and were instead intentional misrepresentations on the part of Mr. Ryant.

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).

Iowa Administrative Code rule 871-24.32(9) provides as follows:

Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

In *FDL Foods v. Employment Appeal Board*, 456 N.W.2d 233 (Iowa Ct. App. 1990), the Iowa Court of Appeals held that the 10-times weekly benefit amount disqualification set forth in Iowa Code section 96.5(2)(a) did not extend to disciplinary suspensions. Under the court's reasoning there would be no basis for disqualifying a claimant for benefits in connection with a temporary disciplinary suspension beyond the period of the suspension and no basis for relieving the employer of liability for benefits in connection with a temporary disciplinary suspension beyond the period of the suspension.

The evidence in the record establishes that Mr. Ryant was suspended effective August 29, 2019 for misconduct in connection with the employment based on knowing and intentional time-keeping fraud. Mr. Ryant's fraudulent time-keeping demonstrated a willful and wanton disregard of the employer's interests and allowed him to be paid for time when he was not actually working. Mr. Ryant is disqualified for benefits for the period of the suspension, August 29, 2019 through September 30, 2019.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied 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).

The claimant received benefits for the weeks that ended September 14, 2019 and September 28, 2019, but this decision disqualifies the claimant for those benefits. Accordingly, the \$518.00 in benefits that Mr. Ryant received for the week that ended September 14, 2019 and the \$518.00 in benefits that Mr. Ryant received for the week that ended September 28, 2019 are overpaid benefits.

Iowa Administrative Code rule 871-24.10(1) defines employer participation in fact-finding interviews as follows:

Employer and employer representative participation in fact-finding interviews.
24.10(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

The employer's written documentation fell short of satisfying the participation requirement in connection with the fact-finding interview due to the lack of detail in the documentation. However, because the claimant provided an intentionally misleading statement at the fact-finding interview, the claimant must repay the overpaid benefits. The employer's account shall be relieved of liability for benefits for the benefit weeks included in the suspension, September 1, 2019 through September 28, 2019.

In light of the ruling in *FDL Foods v. Employment Appeal Board* and because the claimant was reinstated to the employment effective October 1, 2019, there is no basis in connection with the suspension and reinstatement for relieving the employer of liability for benefits for the period

beginning September 29, 2019 or for disqualifying the claimant for benefits for the period beginning September 29, 2019.

DECISION:

The September 26, 2019, reference 01, decision is modified as follows. The claimant was suspended August 29, 2019 for misconduct in connection with the employment. The claimant is disqualified for benefits for the benefit weeks included in the suspension, September 1, 2019 through September 28, 2019. The claimant is overpaid \$518.00 in benefits for the week that ended September 14, 2019 and is overpaid an additional \$518.00 in benefits for the week that ended September 28, 2019. The total overpayment is \$1,036.00. The claimant must repay the overpaid benefits. The employer's account shall be relieved of liability for benefits for the benefit weeks included in the suspension, September 1, 2019 through September 28, 2019.

In light of the ruling in *FDL Foods v. Employment Appeal Board* and because the claimant was reinstated to the employment effective October 1, 2019, there is no basis in connection with the suspension and reinstatement for relieving the employer of liability for benefits for the period beginning September 29, 2019 or for disqualifying the claimant for benefits for the period beginning September 29, 2019.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn