

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DYLAN J REED
Claimant

ADVANCE PUMP & EQUIPMENT INC
Employer

APPEAL NO. 24A-UI-02839-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/11/24
Claimant: Appellant (2)**

Iowa Code Section 96.5(2)(a) & (d) – Discharge

STATEMENT OF THE CASE:

On March 11, 2024, Dylan Reed (claimant) filed a timely appeal from the March 4, 2024 (reference 01) decision that disqualified him for benefits and that relieved the employer's account of charge for benefits, based on the deputy's conclusion the claimant was discharged on February 9, 2024 for loafing on the job. After due notice was issued, a hearing was held on April 4, 2024. Claimant participated. Georgette Mills, Human Resources Manager, represented the employer. The employer's proposed exhibit packet, Exhibit 1, was not received into evidence because the employer did not serve the proposed exhibit material on the claimant.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Dylan Reed (claimant) was employed by Advance Pump & Equipment, Inc. as a full-time lead welder until February 9, 2024, when the employer discharged him from the employment for alleged loafing. The claimant began the employment in 2019 as a welder and was in the lead welder position during the final three years of the employment. The claimant's work hours were 5:30 a.m. to 2:15 p.m., Monday through Friday. The claimant would receive a 15-minute paid break at 8:30 a.m. and a 45-minute unpaid lunch break from 11:30 a.m. to 12:15 p.m. If the claimant worked a 10-hour shift, the employer would provide another 15-minute paid break at 2:00 p.m. Under the employer's established protocol, the claimant was allowed to use the restroom as needed and was not required to notify anyone prior to stepping away to use the restroom.

The employer alleges that on February 7, 2024, business owner Jill Vanden Berge observed the claimant repeatedly loafing in the morning, observed the claimant return from lunch at 12:15 p.m., and observed the claimant not performing any work between that time and 12:50 p.m., when Ms. Vanden Berge observed the claimant exit the restroom. The claimant

denies that he loafed at any time. The claimant performed his work duties that morning, returned from lunch early at noon to make up time missed earlier in the week, performed his work duties for most of an hour and then briefly visited the restroom before encountering Ms. Vanden Berge. Ms. Vanden Berge summoned the claimant to a meeting where told the claimant to sit silently, yelled and directed demeaning and offensive language at the claimant, and then dismissed the claimant to return to his work duties. Ms. Vanden Berge later told Georgette Mills, Human Resources Manager, that she had “lost her cool” when speaking to the claimant. Ms. Vanden Berge subsequently directed Ms. Mills to discharge the claimant from the employment. Ms. Mills carried out the discharge on February 9, 2024.

The employer alleges that Ms. Vanden Berge walked through the claimant’s work area five or six times on February 5, 2024 and that on each pass through the claimant’s work area observed the claimant placing the same part on the tank he was building. The claimant denies that he loafed or that he was merely pretending to work when the employer was present. The claimant’s work involved custom building metal tanks that had to be constructed pursuant to engineering specifications. The claimant advises that the work required precise construction and finessing of parts to maintain quality standards.

At the time of the discharge, the claimant was overdue for a twice-annual production efficiency audit that would determine the amount of his bonus. Though the employer allegedly questioned the claimant’s productivity during the two days at the end, the employer elected not to complete the efficiency audit prior to discharging the claimant from the employment. The claimant asserts the audit would have reflected performance that significantly exceeded the employer’s production efficiency standards.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)(a) and (d) provides as follows:

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.

...

d. For the purposes of this subsection, “misconduct” means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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. Misconduct by an individual includes but is not limited to all of the following:

...
(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

...
(14) Intentional misrepresentation of time worked or work carried out that results in the individual receiving unearned wages or unearned benefits.

See also Iowa Admin. Code r. 871-24.32(1)(a) (duplicating the text of the statute).

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 Iowa Administrative Code rule 87124.32(4).

The evidence in the record establishes a February 9, 2024 discharge for no disqualifying reason. The employer failed to present sufficient evidence, and sufficiently direct and satisfactory evidence, to prove misconduct in connection with the employment. The employer elected not to present testimony from the sole purported witness the employer alleges observed the claimant loafing on the job. The employer presented insufficient evidence to rebut the claimant’s testimony that he performed his regular duties at or above the employer’s production expectations and at no time loafed on the job. The employer’s unprofessional and verbally abusive conduct on February 7, 2024 undermines any notion that the employer was a reasonable, fair, or objective observer of the claimant’s conduct in the workplace. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer’s account may be charged for benefits.

DECISION:

The March 4, 2024 (reference 01) decision is REVERSED. The claimant was discharged on February 9, 2024 for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer’s account may be charged for benefits.



James E. Timberland
Administrative Law Judge

April 10, 2024
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

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.

AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or 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.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.