IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

WILSON, DERON, L
Claimant

TPI IOWA LLC
TPI IOWA
Employer

APPEAL NO. 13A-UI-04135-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03/10/13
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Deron Wilson filed a timely appeal from the April 1, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 13, 2013. Mr. Wilson participated. Danielle Williams, Human Resources Coordinator, represented the employer. Exhibits One and Two were received into evidence.

ISSUE:

Whether Mr. Wilson was discharged for misconduct in connection with the employment that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Deron Wilson was employed by TPI Iowa as a full-time production worker from July 2012 until March 11, 2013, when Chad Cheek, Shift Manager, and Terri Rock, Human Resources Manager, discharged him from the employment based on events that occurred on the evening of March 10, 2013. On that evening, Mr. Wilson told Shift Leader Mike Swayback that he was a bitch and had on tight pants. Mr. Swayback reported the matter to Chad Cheek, Shift Manager. Mr. Cheek summoned Mr. Wilson to his office. Mr. Cheek felt that Mr. Wilson was being loud and uncooperative. Mr. Cheek told Mr. Wilson to go home for the evening. Mr. Wilson instead returned with another employee. Mr. Cheek repeated the directive for Mr. Wilson to go home. As Mr. Wilson made his way out of the facility, he continued to yell profanity. The next morning, Terri Rock, Human Resources Manager, left a message for Mr. Wilson, telling him that he was discharged from the employment and was not to return.

REASONING AND CONCLUSIONS OF LAW:

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.

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).

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).

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).

An employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. Henecke v. Iowa Department of Job Service, 533 N.W.2d 573 (Iowa App. 1995). Use of foul language can alone be a sufficient ground for a misconduct disqualification for unemployment benefits. Warrell v. Iowa Dept. of Job Service, 356 N.W.2d 587 (Iowa Ct. App. 1984). An isolated incident of vulgarity can constitute misconduct and warrant disqualification from unemployment benefits, if it serves to undermine a superior's authority. Deever v. Hawkeye Window Cleaning, Inc. 447 N.W.2d 418 (Iowa Ct. App. 1989).

The outcome of this case comes down to the employer's failure to prove its case by presenting appropriate testimony through appropriate witnesses possessing personal knowledge of the matters in question. The employer has failed to present sufficient evidence, and sufficiently direct and satisfactory evidence, to establish misconduct in connection with the employment. The employer had the ability to present testimony through Mr. Swayback and Mr. Cheek, but failed to present testimony from either person. The employer elected instead to present email correspondence and another unsworn hearsay statement as its primary evidence in the matter. The employer's sole witness, Ms. Williams, was in no way involved in the events of March 10 and lacked personal knowledge of those events. Mr. Wilson asserts that he and Mr. Swayback were engaged in mutually antagonistic bit jesting banter. Mr. Wilson asserts that Mr. Swayback complained only because Mr. Wilson got the best of him in the verbal joust. The employer has the burden of proof and has failed to present sufficient evidence to rebut Mr. Wilson's assertions. Mr. Wilson provided a plausible explanation for why he brought another coworker in to speak to Mr. Cheek. The evidence fails to establish that Mr. Wilson was insubordinate. While there is sufficient evidence to establish that Mr. Wilson used profanity as he made his way out of the workplace, the employer has failed to present sufficient evidence to prove that Mr. Wilson used the particular vulgar language the employer attributes to him. Mr. Wilson asserts he used more mildly offensive language. Again, the employer had the ability to present testimony to rebut Mr. Wilson's assertions, and the ability to present testimony to establish the actual context of the conduct, but the employer elected not to present such testimony.

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

DECISION:

The agency representative's April 1, 2013, 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.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

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