

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD L MORRIS
Claimant

APPEAL NO. 10A-UI-08072-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC
Employer

OC: 05/09/10
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 2, 2010, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on July 21, 2010. Claimant Richard Morris participated. Nikki Bruno, Human Resources Generalist, represented the employer and presented additional testimony through David Techau, Plant Engineer, and Trevor Fuhlman, Supervisor.

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: Richard Morris was employed by West Liberty Foods as full-time maintenance mechanic from 1996 until May 6, 2010, when Maria Bozaan, Human Resources Manager, discharged him from the employment. The final incident that prompted the discharge occurred on April 24, 2010, when David Techau, Plant Engineer, discovered that Mr. Morris had misdiagnosed the problem with a forklift. Both Mr. Morris and another mechanic had investigated the problem and had concluded independently that the forklift needed a part that had to be ordered. When Mr. Techau looked at the forklift, he quickly discerned that the problem was different from and less serious than what Mr. Morris thought the problem was. Mr. Techau thought that Mr. Morris would have seen the problem had he conducted a proper investigation. Mr. Morris had investigated the problem to the best of his ability, but had come up with the wrong diagnosis. The employer suspended Mr. Morris on April 28, 2010, while the employer considered whether to continue the employment. The employer then discharged Mr. Morris on May 6, 2010.

In making the decision to discharge Mr. Morris from the employment, the employer considered prior reprimand from January 2010. In December 2009, Mr. Morris concluded that he lacked the proper parts to properly repair the horn on a piece of equipment. When Trevor Fuhlman, Supervisor, looked into the matter, he discovered parts were available to make the horn functional and that Mr. Morris had located the parts after Mr. Fuhlman had inquired why it was

taking so long to repair the piece of equipment. The piece of equipment was off-line for two to three hours. This incident factored in a January 20, 2010 reprimand. The January 20, 2010, reprimand had also been prompted by Mr. Morris' ongoing failure to properly log the repair work he did. The employer had given Mr. Morris instructions regarding how to complete the log, but Mr. Morris continued to provide less than complete information. The January 20 reprimand was also prompted by an allegation that Mr. Morris had refused to repair a piece of equipment, but Mr. Morris had not in fact refused. Instead, the employee requesting to have the piece of equipment repaired had left the equipment in a manner and in an area such that Mr. Morris could not tell which piece of equipment needed service.

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). 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).

The employer asserts bad faith in connection with the final incident on April 23-24, 2010. The weight of the evidence establishes that Mr. Morris simply misdiagnosed the problem with the forklift, as did the other mechanic. The weight of the evidence fails to establish that Mr. Morris was careless or negligence in connection with the final incident that triggered the discharge. In the absence of an indication of misconduct in connection with the final incident, the administrative law judge must conclude there was not current act of misconduct and that discharge was for no disqualifying reason. Because there was no current act of misconduct, the administrative law judge need not inquire further into prior matters from December and January. See 871 IAC 24.32(8).

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

DECISION:

The Agency representative’s June 2, 1010, reference 01, decision is affirmed. 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

jet/pjs