

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER L VANCE
Claimant

APPEAL NO. 13A-UI-07941-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**HUMAN RESOURCES
UNIPARTS OLSEN INC**
Employer

**OC: 06/09/13
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated June 26, 2013, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on August 13, 2013. Claimant participated. Although duly notified, the employer did not participate.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Christopher Vance was employed by Uniparts Olsen, Inc. from September 2012 until June 8, 2013 when he was discharged from employment. Mr. Vance was employed as a full-time production worker on the company's third shift and was paid by the hour. His supervisor was Tim (last name unknown).

The claimant was discharged based upon the employer's belief that Mr. Vance had actively participated in a physical altercation between himself and another hourly employee in early June 2013. On the day in question Mr. Vance was removing work items from the lower portion of a file cabinet when another hourly employee struck the claimant with a pallet jack carrying two pallets. Because the act appeared to be intentional, Mr. Vance stated, "What are you doing ?..Do you know where you're going?" The other employee left the area and Mr. Vance considered the matter to be closed.

Later that day the claimant's supervisor told Mr. Vance that the other employee had alleged that Mr. Vance had struck him. Mr. Vance denied the allegation but nevertheless was sent home pending an investigation into the matter. Claimant was later informed by telephone that a decision had been made to discharge him from employment because the other employee had alleged that Mr. Vance had struck him.

Mr. Vance was aware of the company's policies which prohibited violence or threats of violence and did not believe that he was in violation of the policies because he had not initiated the conflict that day and had responded only by asking the other employee what he was doing and telling him in effect to be more careful.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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 establishing job disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). 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. of Appeals 1992).

Allegations of misconduct 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).

In the case at hand, Mr. Vance participated personally and testified under oath testifying that he did not initiate a conflict between himself and another employee on or about June 8, 2013. The claimant testified that the other employee appeared to have intentionally struck him with a pallet jack and pallets for no apparent reason and that the claimant was startled but responded only by asking the employee what he was doing and in effect telling him to be more careful. The claimant denies striking the other employee or acting in any manner in violation of the company's policies that prohibit violence or the threats of violence in the workplace.

There being no evidence to the contrary, the administrative law judge concludes that the claimant was discharged under non disqualifying conditions. Benefits are allowed, providing the claimant is otherwise eligible.

What constitutes misconduct justifying termination of an employee and what misconduct warrants the denial unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not always serious enough to warrant a denial of unemployment insurance benefits. Such misconduct must be "substantial." An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation.

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). Where 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.

DECISION:

The representative's decision dated June 26, 2013, reference 01, is reversed. Claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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