

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**ETHAN A FREDENBURG**  
Claimant

**APPEAL NO. 18A-UI-11493-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**INDUSTRIAL STEEL ERECTORS INC**  
Employer

**OC: 02/11/18**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Ethan Fredenburg filed a timely appeal from the November 14, 2018, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on the Benefits Bureau deputy's conclusion that Mr. Fredenburg was discharged on October 26, 2018 for insubordination in connection with the employment. After due notice was issued, a hearing was held on December 11, 2018. Mr. Fredenburg participated. The employer did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate in the hearing. Exhibit A was received into evidence.

**ISSUE:**

Whether Mr. Fredenburg 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: Ethan Fredenburg is a journeyman ironworker affiliated with a local trade union. Mr. Fredenburg was employed by Industrial Steel Erectors, Inc. during multiple distinct periods. The most recent period of employment began in July 2018 and ended on October 26, 2018, when Foreman Jason Awalt discharged Mr. Fredenburg from the employment. Mr. Awalt was Mr. Fredenburg's immediate supervisor. On October 26, 2018, Mr. Fredenburg asked Mr. Awalt for personal protective gear, welding gloves, that Mr. Fredenburg needed to safely perform welding duties. Mr. Awalt refused to provide the gloves and opined that since he did not personally wear them, he did not deem them necessary personal protective equipment. Mr. Fredenburg had on multiple earlier occasions requested the welding gloves and Mr. Awalt had on each occasion denied the request. The employer was contractually obligated to provide personal protective equipment for use on the jobsite. When Mr. Awalt refused Mr. Fredenburg's request for welding gloves on October 26, Mr. Fredenburg told Mr. Awalt that Mr. Awalt was the only foreman who did not supply gloves. Mr. Awalt told Mr. Fredenburg that he could use his own money to purchase the gloves and that if he did not like it, he could go somewhere else. Mr. Fredenburg told Mr. Awalt he could just fire him. Mr. Awalt told Mr. Fredenburg, "You're fired." The employment ended at that time.

## 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 a discharge 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).

The evidence in the record establishes a discharge for no disqualifying reason. The employer did not participate in the hearing and did not present any evidence to prove misconduct in connection with the employment. The employer discharged Mr. Fredenburg in response to Mr. Fredenburg's reasonable request for personal protective gear that he needed to safely perform his work duties. Mr. Fredenburg is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits.

**DECISION:**

The November 14, 2018, reference 01, decision is reversed. The claimant was discharged on October 26, 2018 for no disqualifying reason. The claimant is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs