

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JOEL A OLTMANN
Claimant

APPEAL NO. 19A-UI-04453-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABCM CORPORATION
Employer

OC: 04/28/19
Claimant: Respondent (2)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct
Iowa Code Section 96.3(7) - Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 22, 2019, reference 01, decision that held the claimant was eligible for benefits provided he met all other eligibility requirements and that employer's account could be charged for benefits, based on the Benefits Bureau deputy's conclusion that the claimant was discharged on May 1, 2019 for no disqualifying reason. After due notice was issued, a hearing was held on June 26, 2019. Claimant Joel Oltmann did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. Sharon Conrad represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1 through 4 into evidence. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

ISSUES:

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

Whether the claimant was overpaid benefits.

Whether the claimant must repay benefits.

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Joel Oltmann was employed ABCM Corporation as a full-time maintenance worker and van driver at Dumont Wellness Center, a nursing home facility, until May 1, 2019, when the employer discharged him from the employment for failing to properly secure a wheelchair-bound resident during transport. The incident that triggered the discharge occurred on April 17, 2019.

Mr. Oltmann secured the resident's wheelchair to the van floor, but knowingly and intentionally did not belt the resident into the wheelchair. The employer's written work rules required that all passengers be secured by safety belts during transport. Mr. Oltmann had received proper training and was aware of the work rule. Toward the end of the transport trip on April 17, 2019, Mr. Oltmann hit a bump in a hospital parking lot. The resident slid out of his wheelchair and suffered significant injury that required hospitalization. On April 18, 2019, Sharon Conrad, Office Manager and Human Resources Coordinator for Dumont Wellness Center, questioned Mr. Oltmann about the incident. Mr. Oltmann acknowledged knowing the employer's work rule about securing passengers during transport. Mr. Oltmann stated that the resident had during a prior transport expressed that he was in pain from the safety belt. Mr. Oltmann stated he had for that reason not attempted to use the safety belt on the April 17, 2019. Mr. Oltmann had not brought the transport concern to the attention of a supervisor or other member of management. Ms. Conrad suspended Mr. Oltmann on April 18, 2019 pending the outcome of the employer's investigation. On May 1, 2019, the employer notified Mr. Oltmann of the discharge decision.

Mr. Oltmann established an original claim for benefits that was effective April 28, 2019, and received \$3,264.00 in benefits for eight weeks between April 28, 2019 and June 22, 2019. ABCM Corporation is the sole base period employer in connection with the claim.

On May 21, 2019, an Iowa Workforce Development Benefits Bureau deputy held a fact-finding interview that addressed Mr. Oltmann's separation from the employment. Ms. Conrad represented the employer at the fact-finding interview.

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 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).

The weight of the evidence in the record establishes a discharge for misconduct in connection with the employment. Mr. Oltmann knowingly and intentionally violated a critically important work safety rule the basis of which was to ensure resident safety during transport. Mr. Oltmann's decision to disregard the safety rule caused the resident being transported to suffer significant injury and exposed the employer to sanction and liability. The resident's prior concern about the safety belt did not provide a reasonable basis for violating the employer's safe transport rule or for failing to bring the concern to the employer's attention. Mr. Oltmann's failure to secure the resident was an intentional and substantial disregard of the employer's interests and of the interests of the resident in his care during the transport. This was not an incident involving mere ordinary negligence. Mr. Oltmann is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. He must meet all other eligibility requirements.

The unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later deemed ineligible benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the base period employer failed to participate in the initial proceeding, the base period employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)(a) and (b).

Mr. Oltmann received \$3,264.00 in benefits for eight weeks between April 28, 2019 and June 22, 2019, but this decision disqualifies him for those benefits. Accordingly, the benefits

Mr. Oltmann received constitute an overpayment of benefits. Because the employer participated in the fact-finding interview, Mr. Oltmann is required to repay the overpaid benefits. The employer's account will be relieved of liability for benefits, including liability for benefits already paid.

DECISION:

The May 22, 2019, reference 01, decision is reversed. The claimant was suspended on April 18, 2019 and discharged on May 1, 2019 for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The claimant was overpaid \$3,264.00 in benefits for eight weeks between April 28, 2019 and June 22, 2019. The claimant must repay the overpaid benefits. The employer's account will be relieved of liability for benefits, including liability for benefits already paid.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs