

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIM L BELL
Claimant

APPEAL NO. 08A-UI-04993-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**VERMEER MANUFACTURING
COMPANY INC**
Employer

**OC: 04/27/08 R: 03
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

Vermeer Manufacturing Company, Inc., filed a timely appeal from the May 22, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on June 18, 2008. Claimant Tim Bell participated. Becky Fowler, Human Resources Business Partner, represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant.

ISSUE:

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

Whether the final act that prompted the discharge constituted misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Tim Bell was employed by Vermeer Manufacturing Company on a full-time basis from April 1, 1996 until May 1, 2008, when Area Manager Josh Allen and Human Resources Business Partner Kenny Karr discharged from the employment. At the time of the discharge, Mr. Bell was a machine tech, a position he had held since March 2004.

The final incident that prompted the discharge occurred on April 25, 2008. On that date, Mr. Bell took a restroom break while his machine downloaded the program for the next production run. Mr. Bell knew the machine could take up to five minutes to download the program. The employer's restroom break policies allowed Mr. Bell to take a restroom break at his discretion. On his return from the restroom, Mr. Bell stopped to fish some empty pop cans out of a trash can. Mr. Bell was away from his machine no more than five minutes.

The April 25 pop can incident followed a discussion Mr. Allen had with Mr. Bell on April 24. On April 23 a coworker had reported to Mr. Allen that Mr. Bell was operating a grinder without the required face shield and weld jacket. Mr. Allen had been wearing a protective apron. Mr. Allen

had started to use the grinder and realized he was not wearing the face shield on. At the time Mr. Allen spoke with Mr. Bell on April 24, Mr. Bell was wearing trousers that had open holes below the knees. The employer's established safety rules required that Mr. Bell wear protective equipment and required that Mr. Bell not wear clothing with holes. Mr. Bell was aware of the employer's safety rules.

Mr. Bell had received prior reprimands for poor work quality and failure to report a minor injury.

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 greater weight of the evidence in the record fails to establish misconduct in connection with the final incident that triggered the discharge from the employment. The evidence indicates instead that Mr. Bell took a brief restroom break while his machine was preparing for a new production run and that Mr. Bell made a good-faith error in judgment when he decided to fish some pop cans out of the trash. The evidence does not indicate that Mr. Bell was acting with willful disregard of the interests of the employer, or was being careless or negligent, in connection with the incident that triggered the discharge. Because the final incident did not involve misconduct, the administrative law judge need not consider the prior reprimands.

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

DECISION:

The Agency representative's May 22, 2008, 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/kjw