

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHEAL P LEE
Claimant

APPEAL NO. 16A-UI-11142-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PACKERS SANITATION SERVICES INC
Employer

OC: 09/11/16
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Micheal Lee filed a timely appeal from the October 3, 2016, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on an agency conclusion that Mr. Lee was discharged on September 13, 2016 for misconduct in connection with the employment. After due notice was issued, a hearing was held on October 31, 2016. Mr. Lee participated. Sarah Steiner, Human Resources Supervisor, represented the employer.

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: Micheal Lee was employed by Packers Sanitation Services, Inc. (Packers) as a full-time Site Manager until September 13, 2016, when Josh Hinkle, Vice President, and German Carmona, Field Human Resources Manager, discharged him from the employment for violating company hiring policy. Mr. Lee worked at a Tyson plant in Columbus Junction. Mr. Lee had started in the employment as a Site Supervisor. Mr. Lee was later promoted to Assistant Site Manager. In October 2015, Mr. Lee was promoted to Site Manager. Mr. Lee supervised more than 100 employees. Mr. Lee's immediate supervisor was Todd Lee, Area Manager. Todd Lee is Micheal Lee's father.

The matter that triggered the discharge involved the rehiring of an employee under a bogus name. The employee's actual name was Mayo Amanda Hernandez. At some earlier point, Drew Kindig, Technical Services Manager, had discharged Mr. Hernandez for a safety violation. Monica Ortiz, Employee Retention Program Coordinator, was relatively new to the employer and was the person who actually facilitated Mr. Hernandez's rehire. Mr. Hernandez used a bogus name, Julian Villareal, and bogus identification in connection with the re-hire. Ms. Ortiz was the person who reviewed the employee's documentation in connection with the hire. Mr. Lee forwarded that paperwork provided by Ms. Ortiz to the employer's corporate human

resources staff. Mr. Lee was unaware that Mr. Hernandez had presented bogus identification or had been rehired under a bogus name. Mr. Kindig brought the matter to the employer's attention on August 31, 2016. On that same day, German Carmona, Field Human Resources Manager, went to Columbus Junction plant to investigate. While there, Mr. Carmona told Mr. Lee that he would be fired in connection with the matter.

On September 13, 2016 Mr. Hinkle and Mr. Carmona notified Mr. Lee that he was discharged from the employment. At the time of discharge, Mr. Hinkle and Mr. Carmona had Mr. Lee sign a termination letter. Mr. Lee did not read the letter before he signed it. The letter stated as follows:

The purpose of this letter is to document the findings of our investigation and to receive acknowledgement from you that your actions are unacceptable. We conducted an investigation of allegations that were received concerning your conduct. During the investigation, we determined that you failed to follow proper PSSI hiring procedures when former employee Mayo Amanda Hernandez was re-hired despite his documents not relating to this person. We have concluded that your actions as a Site Manager have been inappropriate and your employment with PSSI has been terminated.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

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). 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 failed to present sufficient evidence, and sufficiently direct and satisfactory evidence, to prove misconduct in connection with the employment. The employer elected not to present testimony from anyone with personal knowledge of the matter that was the basis for the discharge. The employer had the ability to present such testimony. The employer failed to present sufficient evidence to rebut Mr. Lee's testimony that his only involvement in rehiring the employee was forwarding paper work to the employer's corporate office and that another employee, Ms. Ortiz, was the person who met with the rehired employee and reviewed the rehired employee's documentation. The employer failed to present sufficient evidence to rebut Mr. Lee's testimony that he did not read the termination letter before he signed it and, therefore, was unaware that the letter included an acknowledgement of wrongdoing.

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

DECISION:

The October 3, 2016, reference 01, decision is reversed. 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