

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHASE, TIMOTHY, J**  
Claimant

**APPEAL NO. 13A-UI-04196-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FEDEX GROUND PACKAGE SYSTEM INC**  
Employer

**OC: 03/10/13**  
**Claimant: Respondent (2-R)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the March 28, 2013, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on June 24, 2013. Claimant Timothy Chase did not respond to the hearing notice instructions to provide a telephone number during and did not participate. Kurt Scholbrock represented the employer. Exhibits One through Four were received into evidence.

**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: Timothy Chase was employed by FedEx Ground Package System, Inc., as a part-time package handler from 2011 until March 13, 2013, when Kenny Jones, Senior Manager and Laura O'Neill, Human Resources Specialist, discharged him from the employment for violating the employer's Acceptable Conduct policy. Mr. Chase's immediate supervisor was Kurt Scholbrock, Operations Manager. Mr. Scholbrock reported to Mr. Jones. The employer's written Acceptable Conduct policy prohibited, "Threatening, intimidating, coercing, abusive language, or displaying blatant or public disrespect towards any employee or customer while on duty, on Company property, or at off-site Company meetings and functions." Mr. Chase received a copy of the policy and signed his acknowledgement of the policy at the start of his employment.

Mr. Chase would start his work day at 4:00 a.m. and assist with loading delivery trucks. The work day would end for Mr. Chase and the roughly 30 other part-time package handlers when the loading work was done. That would usually be between 6:30 and 6:45 a.m., but could be later if needed due to weather, truck getting a flat tire or some other issue that prolonged the time it took to load the trucks.

The final incident that triggered discharge occurred on March 12, 2013. On that day, it took longer than usual to complete the package handling work. At 7:00 a.m., Mr. Scholbrock was

walking through the work area checking on the status of the workload when Mr. Chase yelled at him very loudly, "Hey, I gotta go!" Mr. Scholbrock stated there was a lot left to do and that he needed him to remain in his workstation until the work was done. Mr. Chase loudly screamed at Mr. Scholbrock that his wife had to work and that they only had one car. The volume of Mr. Chase's voice caught the attention of his coworkers. Mr. Scholbrock stated that he needed everyone until the sorting work was done and then Mr. Chase could go. Mr. Chase was at that time standing in the middle of the truck. His shoulders were hunched. His hands were balled up as if in fists down by his side. Mr. Chase's posture was aggressive and caused Mr. Scholbrock to be concerned whether Mr. Chase would further escalate the situation. Mr. Chase yelled at Mr. Scholbrock that he was going to make Mr. Chase choose between his job and his wife's job. Mr. Chase spoke to Mr. Scholbrock through gritted teeth. At that point, due to the continued disruption of the work area, Mr. Scholbrock asked Mr. Chase to come to the time clock. Mr. Scholbrock told Mr. Chase he could not be acting this disruptive. Mr. Scholbrock told Mr. Chase that he was not being terminated at that time but that Mr. Scholbrock was going to review the matter with the Senior Manager and human resources because there had been prior similar outbursts and they were unacceptable.

Later that day, Mr. Jones and Ms. O'Neill decided to discharge Mr. Chase from the employment. Mr. Scholbrock telephoned Mr. Chase and told him not to appear for his early-morning shift the next day, but instead to meet with Mr. Scholbrock and Mr. Jones at 10:00 a.m. At that meeting the next day, employer discharged Mr. Chase from the employment.

In making the decision to end the employment, employer considered another couple of incidents on December 22 and 23, 2012. The employer required Sunday work during the business holiday season. During the Sunday shift Mr. Chase became animated and started screaming that everyone should get extra pay for working on Sunday. Mr. Scholbrock agreed to look into the possibility. Mr. Chase also became belligerent when paychecks were delayed due to blizzard weather conditions. Friday was payday. The paychecks had to come by truck from Chicago. Mr. Chase became upset and asserted that he needed to make a car payment and that the Friday payday was part of the work agreement. Mr. Chase was creating a scene in the workplace. Mr. Jones initially asked Mr. Chase to calm down. When Mr. Chase did not calm down, Mr. Jones took Mr. Chase off the production line and suggested that he have his check direct deposited so that he would not have to wait for a paper check. Mr. Jones directed Mr. Chase to leave for the rest of the day and advised Mr. Chase that he would contact Mr. Chase when the paychecks arrived. On January 4, Mr. Jones and Mr. Scholbrock met with Mr. Chase to review the events of Christmas week and to issue a reprimand. The employer told Mr. Chase that he needed to conduct himself in a more civil manner and that he could not be threatening or disruptive. Mr. Jones followed up with a written reprimand on January 11.

#### **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) alone. 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).

Threats of violence in the workplace constitute misconduct that disqualifies a claimant for benefits. The employer need not wait until the employee acts upon the threat. See Henecke v. Iowa Dept. Of Job Services, 533 N.W.2d 573 (Iowa App. 1995). An employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. Henecke v. Iowa Department of Job Service, 533 N.W.2d 573 (Iowa App. 1995).

The weight of the evidence establishes that Mr. Chase engaged in threatening conduct directed at Mr. Scholbrock on March 12, 2013. Mr. Chase adopted an aggressive posture that included speaking to Mr. Scholbrock through gritted teeth. Mr. Chase's conduct was sufficiently threatening that Mr. Scholbrock was in fear that Mr. Chase might escalate the conduct and felt the need to have him leave the workplace before the work was complete. The final incident was enough to establish misconduct in connection with the employment. While Mr. Chase's earlier conduct did not rise to the same level as in the final incident, the earlier matters were part of a pattern of disruptive, uncivil behavior.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Chase was discharged for misconduct. Accordingly, Mr. Chase is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits.

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of the amount of the overpayment and whether the claimant will have to repay the overpaid benefits.

**DECISION:**

The Agency representative's March 28, 2013, reference 01, decision is reversed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The employer's account will not be charged.

This matter is remanded to the Claims Division for determination of the amount of the overpayment and whether the claimant will have to repay the overpaid benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs