

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ERIC A BARR
Claimant

RIVER CITIES ENGINEERING INC
Employer

APPEAL NO. 19A-UI-09042-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/27/19
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Eric Barr filed a timely appeal from the November 14, 2019, reference 01, decision that disqualified him for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that Mr. Barr was discharged on October 28, 2019 for conduct not in the best interest of the employer. After due notice was issued, a hearing was held on December 11, 2019. Mr. Barr participated. Rachael Padavich 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: Eric Barr was employed by River Cities Engineering, Inc. as a full-time journeyman electrician from January 2019 until October 28, 2019, when Brad Natzke, President, discharged him from the employment. The employer's decision to discharge Mr. Barr from the employment followed two complaints the employer received on October 25, 2019 regarding Mr. Barr's work performance. On October 25, 2019, a residential client notified the employer that Mr. Barr and another electrician had tracked dog feces into the client's home and onto the client's carpet. The client alleged, and the employer alleges, that Mr. Barr failed to perform assigned tasks on the same project. Mr. Barr was unable to complete one of the assigned projects because the homeowner did not like an outside light fixture the employer had selected. Mr. Barr performed other assigned tasks as time allowed, but left the client's home at the end of the work day with a mutual understanding with the client that he would return the next workday to complete additional work. Also on October 25, 2019, the employer received a complaint from an industrial client who made a hearsay assertion that Mr. Barr had been unable to tell one of the client's employees how the wires had been pulled on the client's project weeks earlier. Mr. Barr had needed to refresh his own memory regarding how the wiring was pulled. Once he had an opportunity to do that, he provided the necessary information to the client's employee.

The employer also considered two prior safety incidents when making the decision to discharge Mr. Barr from the employment. In June 2019 and again in August 2019, Mr. Barr skipped one or more steps in performing his work and caused an electrical arc flash that could have led to serious injury or property damage. After the second incident, the industrial client banned Mr. Barr from returning to the client's facility.

On October 18, 2019, the employer had met with Mr. Barr to discuss multiple issues with Mr. Barr's work performance. The performance issues included Mr. Barr's failure to consistently complete daily job safety analysis documentation that he was required to complete prior to beginning his work for the day. The purpose of the documentation was to ensure that Mr. Barr had safety in mind as he performed his daily work duties and had planned the project accordingly. During that same discussion, the employer discussed Mr. Barr's labeling of wires on a school jobsite. Mr. Barr had performed standard preliminary labeling of the wires he pulled and had planned to add the final labels later.

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. The evidence in the record establishes instances of carelessness and negligence that varied in terms of seriousness. Regarding the residential customer's October 25 complaint, the weight of the evidence establishes that Mr. Barr was careless in tracking dog feces into the customer's home and onto the customer's carpet. A reasonable person could readily understand how and why this act of carelessness would be significant hassle, annoyance, and inconvenience to the homeowner. The employer presented insufficient evidence to prove that Mr. Barr failed to perform assigned work on the residential client's home without a reasonable basis. The employer presented insufficient evidence to prove that Mr. Barr did anything inappropriate to provoke the industrial client's October 25 complaint. The evidence indicates that Mr. Barr had taken appropriate steps to get an answer to the client's employee's questions and had then communicated that information to the client. The evidence in the record establishes two very serious safety incidents, one in June 2019 and one in August 2019, that arose from Mr. Barr's negligent failure to perform one or more of the steps needed to ensure that he was performing his work safely. The evidence establishes an undetermined number of times wherein Mr. Barr was negligent by failing to complete the required job safety analysis reports. The employer presented insufficient evidence to prove any other careless, negligence or intentional disregard of the employer's interests. The proven instances of carelessness and negligence, taken together, are sufficient to establish a pattern of conduct indicating and intentional and substantial disregard of the employer's interests. What is most consistent amongst the various incidents is the failure to take appropriate steps to perform the work in a safe and conscientious manner. Because the evidence establishes a discharge based on misconduct in connection with the employment, Mr. Barr is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. Mr. Barr must meet all other eligibility requirements. The employer's account shall not be charged.

DECISION:

The November 14, 2019, reference 01, decision is affirmed. The claimant was discharged on October 28, 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 ten times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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