

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

ADAM E BAST
Claimant

APPEAL NO. 18A-UI-06008-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PROBUILD COMPANY LLC
Employer

OC: 04/22/18
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Adam Bast filed a timely appeal from the May 21, 2018, reference 02, decision that disqualified the claimant for benefits and that relieved the employer of liability for benefits, based on the Benefits Bureau deputy's conclusion that the claimant was discharged on April 24, 2018 for violation of a known company rule. After due notice was issued, a hearing was held on June 15, 2018. Mr. Bast participated. Kris Falder represented the employer and presented additional testimony through Terry Johnson. Exhibits 1 and 2 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: Adam Bast was employed by Probuild Company, L.L.C. as a full-time assembler/sawyer from August 2017 until April 24, 2018, when Glen Stobb, General Manager, discharged him from the employment for unauthorized operation of a fork lift. Terry Johnson, Second Shift Supervisor, was Mr. Bast's immediate supervisor. The employer provided Mr. Bast with an employee handbook at the start of the employment. The handbook contained a set of safety rules. The safety rules included the following:

Get Proper Training.

Only trained and authorized employees may operate forklifts.... Vehicle operation...and numerous other operations require specialized training. Contact your supervisor if you have any questions about how to handle a situation safely. Do no attempt to perform any job or operate any equipment if you have not been trained and authorized to do so.

Mr. Bast did not read the safety rules and was not familiar with the rule that required him to be trained and authorized to operate forklifts in the workplace. Mr. Johnson, Mr. Bast's supervisor, knew that forklift training was recommended, but was unaware of a rule that *required* specific training and authorization to operate the employer's forklifts. Throughout the employment,

Mr. Bast operated a forklift from time to time to assist with putting the forklifts away at the end of the shift. He did so without being counseled or reprimanded.

A week before Mr. Bast was discharged from the employment, Matt Forey, Plant Manager, asked Mr. Bast to operate the forklift to go to the employer's storage yard and retrieve lumber. Mr. Johnson was present for the conversation. Mr. Bast told Mr. Forey that he did not feel comfortable moving materials with the forklift. Neither Mr. Forey nor Mr. Johnson said anything to Mr. Bast to indicate that Mr. Bast was thereafter not authorized to assist with putting the forklifts away at the end of the shift.

The sole incident that factored in the discharge occurred on the evening of April 23, 2018, when Mr. Bast operated a forklift to put it away at the end of the shift. Mr. Stobb discharged Mr. Bast the next day.

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). 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 evidence in the record fails to establish that Mr. Bast knowingly violated an employer work rule. Neither Mr. Bast nor his supervisor, Mr. Johnson, was aware of a work rule that *required* specific training and specific authorization for operating a forklift, despite the written work rule contained in the employee handbook. The weight of the evidence establishes that Mr. Bast had on multiple occasions operated a forklift to put it away at the end of the shift and had done so without being counseled to refrain from operating the forklift. In the absence of a knowing and intentional violation of a work rule, and in the absence of an intentional and substantial disregard of the employer's interests, the evidence does not support a finding of misconduct in connection with the employment. Mr. Bast was discharged for no disqualifying reason. Accordingly, Mr. Bast is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The May 21, 2018, reference 02, decision is reversed. The claimant was discharged on April 24, 2018 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/rvs