

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GREGORY W MAUSSER
Claimant

APPEAL NO. 10A-UI-08226-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTRAL COLLEGE
Employer

OC: 05/09/10
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Gregory Mausser filed a timely appeal from the June 8, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 26, 2010. Mr. Mausser participated. Mona Roozeboom, Director of Human Resources, represented the employer and presented additional testimony through Gwenda Klyn, Custodial Supervisor, and Mike Lubberden, Director of Facilities Management. Exhibits Two through 10 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: Gregory Mausser was employed by Central College as a full-time custodian from November 2004 until May 10, 2010, when the employer discharged him for ongoing negligence. Until September 2008, Mr. Mausser was a Team Leader, but then accepted a proposed demotion back to custodian and joined another cleaning team. Mr. Mausser's immediate supervisor during the last year of the employment was Erica Martin, Team Leader.

The final incident that triggered the discharge concerned Ms. Martin's discovery on May 5, 2010, that Mr. Mausser had failed to properly clean bathrooms and a stairway. The conditions of the bathrooms and stairway were such that it was apparent Mr. Mausser had neglected to clean them over an extended period. The discovery was made by Ms. Martin, while Mr. Mausser was on vacation. Ms. Martin summoned Gwenda Klyn, Custodial Supervisor, to further inspect the areas Mr. Mausser was charged with cleaning. Mr. Mausser was discharged from the employment upon his return from vacation on May 10, 2010. The final discovery that Mr. Mausser had been neglecting his duties followed many prior counselings concerning ongoing problems with Mr. Mausser skipping essential steps in his cleaning responsibilities. Mr. Mausser would demonstrate his ability to properly perform his duties for a short while after such counseling, but would then revert to his baseline of skipping essential cleaning duties.

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 weight of the evidence in the record did demonstrate that Mr. Mausser intentionally neglected essential cleaning duties on a fairly consistent basis. The weight of the evidence does not support Mr. Mausser's assertion that he had too much work to do. Mr. Mausser was capable of properly performing his duties, but elected not to. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Mausser was discharged for misconduct. Accordingly, Mr. Mausser 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 paid to Mr. Mausser.

DECISION:

The Agency representative's June 8, 2010, reference 01, decision is affirmed. 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs