

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES OWEN

Claimant

APPEAL NO: 12A-UI-01658-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FARMERS FEED & GRAIN COMPANY INC

Employer

OC: 01/01/12

Claimant: Respondent (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Farmers Feed & Grain Company, Inc. (employer) appealed an unemployment insurance decision dated February 9, 2012, reference 01, which held that James Owen (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 7, 2011. The claimant participated in the hearing with Attorney Russell Schroeder. The employer participated through Owner Steve Eastman and Attorney Aaron Murphy. Employer's Exhibits One through Three were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time employee from April 2007 through January 3, 2012, at which time he was discharged. Prior to working for the employer, the claimant ran a business called Little Buckaroos, which was a car and tire repair business. The employer bought that business and the claimant began working for the employer in a division of the employer's business newly entitled Buckaroos. The claimant handled that part of the business as well as several other duties when he was available.

The employer gave the claimant a credit card in the owner's name and while the owner claims he told the claimant he could not use the credit card for personal use, it appears to have been a longstanding practice. The claimant frequently used the employer's credit card and "settled up once a year at the end." In October 2011, the claimant gave the employer approximately \$5,800.00 to pay for a personal purchase on the employer's credit card of which the employer was unaware. The employer conducted a cursory review of the credit card statements and cancelled the credit card. He documented on the calendar date of October 20, 2011, "misuse of

credit card.” The employer previously asked the claimant for all the September 2011 invoices by October 1, 2011 but the claimant gave him some September invoices after that date and the employer also noted this on his calendar.

The claimant was discharged on January 3, 2012 for using the employer’s credit card for personal use and for failing to pay for those charges. He was also discharged due to invoices for which there was no inventory but which were never charged to others or paid for by the claimant. The employer estimated the claimant owed him a sum of \$28,000 based on the employer’s lengthy investigation, but he subsequently concluded the claimant owes him \$32,524.24. The claimant admits he owes the employer money, but he disputes the total amount.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job*

Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged on January 3, 2012 for using the employer's credit card for personal use, for failing to pay the employer over \$28,000.00 of costs from the credit card, and for invoices never charged or paid and missing inventory. While the employer may not have known the total amount the claimant owed him on October 20, 2011, he did know it was a significant amount and all the credit card purchases were made prior to that date. Since the discharge did not occur until over two months later, the act for which the claimant was discharged may not be a current act.

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge or disciplinary suspension for misconduct cannot be based on such past act(s). The termination or disciplinary suspension 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).

In the case herein, the employer became aware of a significant problem in October 2011 and it was only because he was busy that the investigation was not completed prior to January 2012. While the employer's actions are understandable, it does not make the claimant's acts any more current. Consequently, work-connected misconduct as defined by the unemployment insurance law has not been established in this case and benefits are allowed.

DECISION:

The unemployment insurance decision dated February 9, 2012, reference 01, is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw