

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHNATHAN T JAY
Claimant

APPEAL NO. 14A-UI-07160-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEERE & CO – DES MOINES WORKS
Employer

OC: 06/15/14
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 2, 2014, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on an agency conclusion that the claimant was dismissed on June 17, 2014 for no disqualifying reason. After due notice was issued, a hearing was held on August 5, 2014. Claimant Johnathan Jay did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Joshua MacLean represented the employer. The administrative law judge took official notice of the agency's record of benefits disbursed to the claimant, which record indicates that the claimant has received no unemployment insurance benefits in connection with the claim that was effective June 15, 2014.

ISSUE:

Whether the claimant was discharged or suspended 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: Johnathan Jay has been employed by Deere & Company – Des Moines Works as a full-time mechanic since 2011 and continues in the employment at this time. On June 17, 2014, the employer suspended Mr. Jay for 30 days based on repeated violations of the employer's break policy. The violations occurred on May 28, June 2 and June 12. In each instance, Mr. Jay left his work area to take an unauthorized smoke break at a time when he was supposed to be working. The employer provided Mr. Jay with a 15-minute morning break and a half hour lunch break. The three incidents in question occurred outside of those breaks.

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.

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).

Iowa Administrative Code section 871 IAC 24.32(9) provides as follows:

Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

The evidence in the record establishes that Mr. Jay was suspended for misconduct in connection with the employment that based on repeated violation of the employer's break policy the pattern of conduct demonstrated a willful disregard of the employer's interests. Mr. Jay is disqualified for benefits until he has worked in and paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The employer's account has not been charged for benefits paid to Mr. Jay during the period of suspension and will not be charged for benefits paid to Mr. Jay in connection with the suspension.

Because no benefits have been disbursed, there is no overpayment to address.

DECISION:

The claims deputy's July 2, 2014, reference 01, decision is reversed. The claimant was suspended for misconduct, effective June 17, 2014. 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 has not been charged for benefits paid to the claimant during the period of suspension and will not be charged for benefits paid to the claimant in connection with the suspension.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css