

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TODD J ENDORF
Claimant

APPEAL NO. 17A-UI-08780-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OSCEOLA FOOD LLC
Employer

OC: 07/16/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Todd Endorf filed a timely appeal from the August 16, 2017, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on the claims deputy's conclusion that Mr. Endorf was discharged on July 13, 2017 for insubordination in connection with the employment. After due notice was issued, a hearing was held on September 13, 2017. Mr. Endorf participated. Audria Bird of Employers Unity represented the employer and presented testimony through Roberto Luna. The hearing in this matter was consolidated with the hearing in Appeal Number 17A-UI-08781-JTT. Exhibits 1 through 4 and A through D were received into evidence. The administrative law judge took official notice of the agency's administrative record of benefits disbursed to the claimant.

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: Todd Endorf was employed by Osceola Food, L.L.C. as a full-time production worker from March 27, 2017 until July 13, 2017, when Roberto Luna, Human Resources Manager, discharged him from the employment for refusing to cooperate with the employer's investigation of workplace incidents that occurred on July 11, 2017. Mr. Endorf's work hours were 6:00 p.m. to 6:00 a.m. Mr. Endorf's immediate supervisor was Production Supervisor Kirk Simpson. During his shift on July 10-11, 2017, Mr. Endorf got into verbal disagreements with two coworkers and complained to the supervisor about both coworkers. When the supervisor had Mr. Endorf accompany him to the human resources office to further address the matter, Mr. Endorf refused to speak further on the matter and then left work early to avoid a further meeting with human resources staff at the end of the shift. That morning, the supervisor sent Mr. Luna an email outlining what had occurred during the shift. Mr. Luna subsequently interviewed the two employees who had been the subject of Mr. Endorf's complaints on July 11. Each told Mr. Luna that Mr. Endorf had approached them and started yelling at them for an unknown reason. Mr. Endorf's complaints about the coworkers may or may not have been based on xenophobia. The employer has a

diverse workforce. One of the employees Mr. Endorf complained about was Spanish-speaking person. Another was an immigrant from Russia. The question of whether there was a racial component to Mr. Endorf's complaints was yet to be determined in the course of the investigation.

On July 13, Mr. Luna met with Mr. Endorf as part of his investigation into Mr. Endorf's July 11 interactions with the two employees. Prior to the shift, the employer had deactivated Mr. Endorf's badge so that the employer would have to be alerted to his arrival before he entered the production plant. Prior to the meeting, Mr. Endorf had sent a memo to the human resources department. Mr. Luna had not received or reviewed the memo. The meeting on July 13 took place in Mr. Luna's office. Several other managers were present. Mr. Luna told Mr. Endorf that he had spoken with the other two employees and wanted to know Mr. Endorf's side of the story. Mr. Endorf told Mr. Luna that he would not speak with him without an attorney present. Mr. Luna told Mr. Endorf he just wanted to know what happened. Mr. Endorf again refused to speak without an attorney present. Mr. Luna had not convened the meeting with an intention of discharging Mr. Endorf from the employment. When Mr. Endorf refused to cooperate with the meeting, Mr. Luna told Mr. Endorf that he was being insubordinate and that his actions were grounds for termination of the employment. When Mr. Endorf stuck with his refusal to speak with Mr. Luna, Mr. Luna told him that he was discharged from the employment. The employer's written work rules included a provision that subjected employees to immediate discharge from the employment for insubordination. The employer provided Mr. Endorf with the work rules at the start of his employment.

The next day, Mr. Endorf sent a memo to Mr. Luna indicating that he was willing to talk to Mr. Luna as a part of a brief meeting. Mr. Luna declined to take further action in response to Mr. Endorf's memo and documented a discharge from the employment.

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).

Continued failure to follow reasonable instructions constitutes misconduct. See *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985).

The evidence in the record establishes a discharge for misconduct in connection with the employment based on insubordination and interference with the employer's investigation of a workplace matter. Mr. Endorf triggered the employer's investigation through complaints he made about two coworkers. The complaints pertained to purported dangerous conduct on the part of the coworkers. The employer had a reasonable and legitimate basis for investigating the complaints to determine whether there was a legitimate safety issue or other issues that needed to be addressed and to fashion an appropriate resolution. On July 11, Mr. Endorf unreasonably refused to speak with the employer regarding the complaints he made that day. On July 13, Mr. Endorf again unreasonably refused to speak to the employer regarding the complaints he made or his interaction with the coworkers. Mr. Endorf included in his refusal to speak with the

employer an unreasonable assertion of a right to counsel. Mr. Endorf's refusal to cooperate with the employer's investigation amounted to an intentional and substantial disregard of the employer's interests. Mr. Endorf is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Endorf must meet all other eligibility requirements. The employer's account shall not be charged.

DECISION:

The August 16, 2017, reference 01, decision is affirmed. The claimant was discharged for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until he has worked in and 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

jet/rvs