

Claimant was discharged on August 29, 2005 by employer because of an alleged falsification August 24, 2005. Claimant allegedly falsified an action log two times on August 24, 2005 by indicating calls were outbound when in fact the calls were incoming. Claimant's version of the software choices for documenting calls was drastically different from that of the employer. Claimant indicates three choices for documenting calls: Residence, Business and Incoming. Employer indicates two choices: Incoming and Outbound. Employer failed to provide documentation of the final incident of misconduct on August 26, 2005. Claimant had warnings on his record.

REASONING AND CONCLUSIONS OF LAW:

The issue in this matter is whether claimant was discharged for misconduct.

871 IAC 24.32(1)a, (8) provide:

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 Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning falsification. Claimant was warned concerning this policy.

The last incident, which brought about the discharge, fails to constitute misconduct because employer has failed in its burden of proof. Employer failed to submit documentation of the August 24, 2005 incidents. An adverse inference is established since employer had access to the records which could have proven its case and yet failed to offer such. Employer has the

burden of proof in a case of misconduct. The testimony is equally weighted on the issue of choices for logging a call. As such, claimant prevails when employer cannot refute credible testimony concerning salient facts. Claimant prevails because employer failed to provide corroborating documentation in its possession that supports their version of events occurring August 24, 2005. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated September 22, 2005, reference 02, is affirmed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

mdm\kjf