

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMES A ODELL**  
Claimant

**APPEAL NO. 13A-UI-03149-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AMERICOLD LOGISTICS LLC**  
Employer

**OC: 02/10/13**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Americold Logistics, LLC. filed a timely appeal from a representative's decision dated March 7, 2013, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on April 15, 2013. The claimant participated. The employer participated by Mr. David Campbell and Mr. Pat English.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: James Odell was employed by Americold Logistics, LLC. from July 26, 2011 until February 14, 2013 when he was discharged based upon the employer's belief that he was not following production requirements. Mr. Odell was employed as a full-time warehouse supervisor and was paid by salary. His immediate supervisor was Mr. Pat English and Mr. David Campbell.

Mr. Odell was discharged based upon the employer's belief that he was not requiring "spacers" to be placed between layers of meat product when necessary and that the claimant was instructing hourly employees under his supervision to falsify reports on spacer placement. The matter had been reported to the company by one employee. It appears that the nature of the product on the pallet made it difficult for the employer to determine if spacers had been previously positioned, however, the employer concluded that some spoilage may have been caused by the lack of spacers.

Mr. Odell at the time was under a warning for previous incidents where procedure had not been followed. The warning had informed Mr. Odell that any future violations would result in his termination from employment. Mr. Odell was meeting with his direct supervisor on a weekly basis and was otherwise adhering to requirements of his performance improvement plan. When questioned about the matter by the company, Mr. Odell denied that he had failed to follow procedure, that he had falsified any documentation, or had instructed employees to do so.

In his position of warehouse supervisor, Mr. Odell was required to perform numerous duties in numerous locations. Claimant had provided the required thermometers to employees under his supervision and provided instructions to them to space their meat products if the product appeared to need spacing. Because of the nature of his work and his numerous obligations, the claimant was not able to personally insure that each employee was complying but had no reason to believe that they were not. The claimant did not instruct employees to falsify company documentation.

### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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. Conduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the 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. of Appeals 1992).

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 upon such past acts. The termination of employment must be based on a current act. See 871 IAC 24.32(8).

Allegations of misconduct 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). Where 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 may expose deficiencies in that party's case. See Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976).

While hearsay is admissible in administrative proceedings it cannot be accorded the same weight as sworn direct testimony, providing the sworn direct testimony is credible and not inherently improbable. In this matter, the employer has relied upon hearsay testimony in support of its position that Mr. Odell had engaged in intentional failure to spacer product and had instructed other employees to falsify documentation. The employer provided no first hand witnesses in support of its position but relied on hearsay evidence. In contrast, Mr. Odell participated personally and provided sworn testimony denying the employer's allegations of intentional misconduct and explained his many duties precluded him from being able to monitor the spacing of each pallet of meat. The claimant testified that he attempted, to the best of his ability, to comply with all company requirements and did not falsify nor instruct others to falsify documentation.

The question before the administrative law judge is not whether the employer has the right to discharge an employee for these reasons but whether the discharge is disqualifying under the provisions of the Employment Security Law. While the decision to terminate Mr. Odell may have been a sound decision from management viewpoint, the evidence in the record is not sufficient to establish intentional disqualifying misconduct. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated March 7, 2013, reference 01, is affirmed. Claimant was discharged under nondisqualifying conditions. Unemployment insurance benefits are allowed, provided he is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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