

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TIM A KING**

Claimant

**APPEAL NO. 10A-UI-07616-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEST LIBERTY FOODS LLC**

Employer

**OC: 04/18/10**

**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Tim King filed a timely appeal from the May 18, 2010, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on July 13, 2010. Mr. King participated. Monica Dyar, Human Resources Supervisor, represented the employer. Exhibits One through Seven and A through D were received into evidence.

**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: Tim King was employed by West Liberty Foods as a full-time team leader from February 2008 until April 21, 2010, when Jean Spies, Human Resources Manager, discharged him for alleged sexual harassment, alleged profanity, and allegedly otherwise creating a hostile work environment. Ms. Spies had suspended Mr. King on April 14, 2010, after a female coworker alleged that Mr. King had “flipped her off,” alleged that Mr. King frequently employed the f-word, and alleged that Mr. King made inappropriate sexual gestures in the workplace. Ms. Spies interviewed Mr. King and three employees, whom the employer refuses to identify for the hearing. Ms. Spies had another staff member take notes of the interviews. Monica Dyar, Human Resources Supervisor and the employer’s sole witness for the hearing, did not participate in the employer’s investigation, in the decision to suspend Mr. King, or in the decision to discharge Mr. King. Ms. Spies is still with the employer.

In making the decision to discharge Mr. King from the employment, the employer considered a reprimand issued to Mr. King in June 2009 for throwing a 30-pound meat log on the floor. The employer also considered a reprimand issued to Mr. King in August 2008 for cursing at his supervisor.

## 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.

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. 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).

The employer has failed to present sufficient evidence, and sufficiently direct and satisfactory evidence, to support the allegations of misconduct. The employer's sole witness was not involved in the investigation, suspension, or discharge. The employer failed to present any testimony from persons with personal knowledge of the allegations or the investigation of those allegations. The complaining parties remain anonymous, but for the name of one person whom Mr. King suspects complained about him. The employer provided notes from interviews with unnamed interviewees and expunged signatures on those notes. The employer had the ability to present much more direct and satisfactory evidence, but elected not to. Misconduct cannot be established.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. King was discharged for no disqualifying reason. Accordingly, Mr. King is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. King.

**DECISION:**

The Agency representative's May 18, 2010, reference 02, decision is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw