

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT W WEST
Claimant

APPEAL NO. 15A-UI-10517-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMCOR RIGID PLASTICS USA INC
Employer

OC: 08/30/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Robert West filed a timely appeal from the September 1, 2015, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that he had been discharged on August 25, 2015 for misconduct in connection with the employment. After due notice was issued, a hearing was held on October 1, 2015. Mr. West participated. Jolene Malone represented the employer and presented additional testimony through Mike Chow. Exhibits One, Six, Seven and Eight 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: Robert West was employed by Amcor Rigid Plastics USA, Inc., as a full-time injection maintenance lead until August 25, 2015, when the employer discharged him from the employment for causing injury to another employee in violation of the employer's safety standards. Mr. West had worked at the same production facility for 19 years. Mr. West became an Amcor employee in 2010, when Amcor purchased the production facility. Mr. West was promoted to the lead position a short time after he became an Amcor employee. Mr. West was well aware that the employer stressed safe practices within the facility.

In a particular area of the employer's production facility, the employer has an antechamber or airlock that separates two production areas. On each side of the airlock is garage-type overhead garage door. The overhead doors are automated. The maintenance staff utilizes three-wheel bikes, or trikes, to move quickly from one production area to another. The airlock doors are programmed so that as the trike approaches the airlock from a production area, the door to the airlock opens. Once inside the airlock, the maintenance worker must then wait for the first door to shut before the door on the other side of the airlock will open. Mr. West was very familiar with how the overhead doors worked. Mr. West knew it took about half a minute or

so to move through the automated doors if they functioned as programmed. Mr. West knew it was possible to trick the automated doors into opening at the same time by shutting off power to the first door once it was sufficiently open.

The August 25, 2015 incident that triggered the discharge involved Mr. West's action in interfering with the automated door system. On that day, Mr. West was near the control for the overhead door when he saw maintenance worker Steve Graham approach the first automated door on a trike. Mr. West cut the power to the first door as Mr. Graham was approaching the door. When Mr. West cut the power to the door, the door was not sufficiently open for Mr. Graham to safely pass through the door. Mr. Graham had to lean back to avoid hitting his head on the door. Mr. Graham lost his grip on the handbrakes and fell off the back of the trike onto the concrete floor. Mr. Graham used one of his hands to break his fall. Mr. West immediately responded to assist Mr. Graham and apologized to Mr. Graham. Mr. Graham did not believe he was injured. Mr. Graham moved on with his duties. Mr. West knew that the employer's safety policies required that he and Mr. Graham complete an accident report in connection with any workplace accident. They agreed not to complete an accident report. The incident occurred at the end of Mr. West's shift. Shortly after Mr. West left the workplace, Mr. Graham experienced difficulty in gripping with the hand he had landed on. Mr. Graham notified Mr. West that he would need to complete an accident report. Mr. West opined that they should have completed one before he left and added that he would complete one the next morning.

In making the decision to end the employment, the employer also considered a February 2015 incident wherein Mr. West directed an inappropriate comment toward a male maintenance technician and a female manager. When Mr. West could not get the tech's attention so that he could request a particular tool, Mr. West stated, "Hey Todd, you sure were a lot more fun before you got your girlfriend."

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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).

The evidence in the record establishes that Mr. West knowingly and intentionally interfered with the automated door system and thereby caused an accident and injury. The consequences of Mr. West's interference with the operation of the door system could have been much worse. Mr. West's interference with the door system, cutting power to the system as a coworker was moving through the doors, was sufficient to establish a willful disregard of the employer's interests in maintaining a safe work environment. Even if cutting power to the system had not risen to the level of misconduct, that conduct, coupled with Mr. West's decision to withhold information from the employer regarding the incident by not filing the required accident report, was sufficient to establish misconduct in connection with the employment.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. West was discharged for misconduct. Accordingly, Mr. West is disqualified for benefits until he has worked in and been 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 for benefits.

DECISION:

The September 1, 2015, reference 01, decision is affirmed. The claimant was discharged for misconduct. 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 for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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