

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARCUS R BEASLEY
Claimant

APPEAL NO. 16A-UI-12945-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RELCO LOCOMOTIVES INC
Employer

OC: 11/06/16
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Marcus Beasley filed a timely appeal from the December 1, 2016, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on an agency conclusion that Mr. Beasley had been placed on disciplinary suspension on November 1, 2016 for violation of company rules. After due notice was issued, a hearing was held on December 22, 2016. Mr. Beasley participated. Debra Pettit, Chief Legal Officer, represented the employer and presented testimony through Tim Ash, Human Resources Manager. Exhibits 1, 2, 3 and A were received into evidence.

ISSUE:

Whether the claimant was suspended and/or 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: Marcus Beasley was employed by Relco Locomotives, Inc., as a full-time employee in the paint and blast department from 2011 until November 1, 2016, when Tim Ash, Human Resources Manager, suspended him indefinitely for suspicion of theft of copper. The employer suspended Mr. Beasley after an unnamed, confidential informant alleged to an employer representative, Chelsea Bachman, that Mr. Beasley was involved in theft of copper and sale of the copper to a scrap yard. The employer suspended Mr. Beasley without questioning him regarding the matter and without conducting any investigation of the matter. The employer acknowledges that it has no proof that Mr. Beasley was involved in the alleged criminal conduct. The employer elected to defer to the Monroe County Sheriff's investigation of the alleged conduct. The employer told Mr. Beasley that he would be suspended until the sheriff completed the criminal investigation. Mr. Beasley had not been charged with any criminal offenses.

REASONING AND CONCLUSIONS OF LAW:

Iowa Administrative Code section 871 IAC 24.32(9) provides as follows:

Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

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. Beasley was discharged on November 1, 2016 for no disqualifying reason. The suspension was based on mere allegation of misconduct made by an unnamed source. The employer concedes it had no evidence of misconduct at the time it elected to indefinitely suspend Mr. Beasley. Mr. Beasley is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to Mr. Beasley.

In the event that Mr. Beasley is at some point provides a written confession, pleads guilty to, or is otherwise convicted of an indictable criminal offense wherein the employer is the victim, the employer may want to review Iowa Code Section 96.5(2)(c) regarding gross misconduct.

DECISION:

The December 1, 2016, reference 01, decision is reversed. The claimant was discharged on November 1, 2016 for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs