

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FREDRICK A SCOTT
Claimant

APPEAL NO. 12A-UI-08409-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 06/17/12
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Fredrick Scott filed a timely appeal from the July 11, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 7, 2012. Mr. Scott participated. Christy Jepsen, Training Coordinator and Human Resources back up, represented the employer. Exhibits One, Three and Four 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: Fredrick Scott was employed by Tyson Fresh Meats as a full-time “mule” driver from 2010 until June 12, 2012, when the employer suspended him from the employment. The employer subsequently discharged Mr. Scott from the employment.

The final incident that triggered the discharge concerned an accident involving Mr. Scott’s mule on or about June 12, 2012. The mule is a motorized cart similar to a forklift. On the day in question, Mr. Scott was assigned to work in an area other than his usual work area. Mr. Scott complained to a supervisor regarding the limited space in which to maneuver his mule. Toward the end of his work day, Mr. Scott was operating his cart and hit a pallet, which hit a table, which hit another employee. Earlier in the shift, the employer had notified Mr. Scott of an allegation that he had sexually harassed a female coworker. The accident with the cart occurred shortly after that meeting. At the time the accident occurred, the regular shift had ended and Mr. Scott was spending extra time finishing up his assigned duties.

In making the decision to discharge Mr. Scott from the employment, the employer considered two prior incidents involving Mr. Scott’s operation of the mule. On February 21, 2012, Mr. Scott had been moving a pallet as directed by a supervisor, when the pallet hit another employee’s boot. The other employee was not injured, but the employer issued a reprimand for a safety violation nonetheless.

In making the decision to discharge Mr. Scott from the employment, the employer also considered an incident on March 5, 2012, wherein Mr. Scott stepped off the mule cart while it was still rolling. Mr. Scott had been hurrying to perform required duties. The cart came to a stop shortly thereafter. The employer issued a reprimand for the safety violation.

Mr. Scott worked in an environment wherein time was of the essence and the employer expected work to be performed efficiently and at a brisk pace. The employer also expected that the work would be performed safely.

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 administrative law judge notes that the employer did not present testimony from anyone who witnessed any of the three events that factored in the discharge. The employer had the ability to present such evidence.

The evidence establishes that Mr. Scott was careless in operating his mule during that final shift. Regardless of other attending circumstances, Mr. Scott was the mule operator and the person primarily responsible for safe operation of the mule. The evidence does however indicate extenuating circumstances in connection with the final incident. Mr. Scott testified that he was assigned to work in an area other than his usual work area and that there was reduced space in which to maneuver his mule. There is sufficient evidence in the record to suggest and support the conclusion that Mr. Scott had operated the mule in an unsafe manner on February 21, 2012, when he moved a pallet as directed by a supervisor and the pallet hit another employee's boot. There is sufficient evidence to establish that Mr. Scott operated the mule in an unsafe manner on March 5, 2012, when he stepped off the mule cart before it had come to a complete stop.

Given the nature of the employment, including the fast-pace at which the employer expected Mr. Scott to perform his duties, the three incidents in the record are not enough to establish a pattern of carelessness or negligence indicating a willful disregard of the employer's interests. The administrative law judge notes there were more than two months between the final incident that triggered the discharge and the next most recent incident that factored in the discharge. One can infer that Mr. Scott was operating the mule cart safely during the more than two-month period between the final incident and the one that preceded it and at all other times outside of the three incidents that factored in the discharge.

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

DECISION:

The Agency representative's July 11, 2012, reference 01, 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs