

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

CHUNG H VAUGHN  
PO BOX 193  
DYSART IA 52224-0193

BEEF PRODUCTS INC  
891 TWO RIVERS DR  
DAKOTA DUNES SD 57049-5150

Appeal Number: 06A-UI-05688-JTT  
OC: 04/30/06 R: 03  
Claimant: Respondent (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

Beef Products filed a timely appeal from the May 15, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on June 19, 2006. Claimant Chung Vaughn participated. Human Resources Coordinator Charlene Schuman represented the employer. Exhibits One through Six were received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Chung Vaughn was employed by Beef Products as a full-time, third-shift quality assurance inspector from July 19, 2001 until April 26, 2006, when Human Resources Manager Rick Wood discharged her.

The final incident that prompted the discharge is alleged to have occurred on April 25. On the morning of April 26, a supervisor reported to the employer's human resources department that Ms. Vaughn had neglected to properly inspect blocks of meat product. As part of Ms. Vaughn's quality assurance duties, she was expected to flip over 60-pound blocks of meat product so that oxidation would not form on the surface of the block. On the morning of August 26, the supervisor discovered meat blocks containing oxidation on 11 pallets of meat blocks and attributed the problem to Ms. Vaughn's failure to properly perform her duties. The affected pallets had to be reworked, which included scraping the oxidized material off each affected meat block. Upon receiving the report from the supervisor, Human Resources Manager Rick Wood suspended Ms. Vaughn pending investigation and possible discharge. The supervisor who reported the conduct is still employed by Beef Products, but did not testify at the hearing. On April 26, Ms. Vaughn provided a written statement to the employer in which she asserted she had appropriately performed her duties.

The employer had issued a prior reprimand to Ms. Vaughn on February 13, 2006, in connection with Ms. Vaughn's failure to properly weigh product. Ms. Vaughn acknowledged that she had weighed some, but not all, of the product that should have been weighed. On October 13, 2005, the employer had suspended Ms. Vaughn for three days because she gave a production employee a "retain tag," a quality indicating marker that only quality assurance employees were authorized to possess or use.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Vaughn was discharged for misconduct in connection with the employment. 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 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 employer had the burden of proving misconduct, but has failed to present sufficient evidence to prove intentional misconduct, carelessness or negligence in connection with the oxidized meat discovered on April 26. The employer had the ability to present first hand testimony from the supervisor who reported the matter to the human resources department, but failed to do so. The evidence in the record fails to establish that Ms. Vaughn was careless, negligent or otherwise failed to perform her duties on April 25.

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

#### DECISION:

The Agency representative's decision dated May 15, 2006, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

jt/kkf

