

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

TYLER JAEGER
Claimant

APPEAL NO. 18R-UI-06860-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN ORDNANCE LLC
Employer

OC: 04/01/18
Claimant: Appellant (2)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct
Iowa Administrative Code rule 871-24.32(9) - Suspension

STATEMENT OF THE CASE:

Tyler Jaeger filed a timely appeal from the April 25, 2018, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on the Benefits Bureau deputy's conclusion that Mr. Jaeger was discharged on April 1, 2018 for violation of a known company rule. After due notice was issued, a hearing was held on July 11, 2018. Mr. Jaeger participated. The employer did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate.

ISSUE:

Whether Mr. Jaeger was suspended and/or discharged for misconduct in connection with the employment that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Tyler Jaeger is employed by American Ordnance, L.L.C., a government owned munitions manufacturer, as a full-time armed security guard. Mr. Jaeger began his employment in 2015.

In March 2018, Ruthann Kempker, Human Resources Manager, notified Mr. Jaeger that an agent from the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) needed to get in contact with Mr. Jaeger based on something that appeared on Mr. Jaeger's "record." Mr. Jaeger was thereafter in contact with an agent from the Explosives Licensing Department, Sandy Curtis, who advised Mr. Jaeger that a charge appeared on his military service record and that Mr. Jaeger could not work at the munitions plant with the charge on his record. Mr. Jaeger explained to the agent that he had been falsely identified and falsely implicated in a matter in 2011 while serving in the United States Air Force. The agent advised Mr. Jaeger that the matter had come to the attention of the Federal Bureau of Investigations. The agent advised Mr. Jaeger that he could not work at the munitions plant without the ATF explosives license and that Mr. Jaeger would have to provide documentation proving that he had been falsely identified in the matter that appeared on his record. On the next day, the ATF deactivated Mr. Jaeger's explosives license.

On March 22, 2018, Ruthann Kempker, Human Resources Manager, notified Mr. Jaeger that he was being suspended and placed on unpaid leave because the ATF had deactivated his system clearance. Mr. Jaeger thereafter commenced the arduous process of securing the relevant Air Force record through a Freedom of Information Act (FOIA) request.

Mr. Jaeger established an original claim for unemployment insurance benefits that was effective April 1, 2018 in response to the March 22, 2018 suspension.

On May 4, 2018, Mr. Jaeger received the relevant record that proved he had been falsely identified and implicated in the matter that prompted deactivation of his ATF explosives license. Mr. Jaeger still had to provide that material to the Explosives Licensing Department and wait for that entity to reinstate his explosives license.

On May 10, 2018, the employer notified Mr. Jaeger that the employer could no longer hold Mr. Jaeger's job while the licensing reinstatement process played out and that employer was terminating Mr. Jaeger's employment. On May 11, 2018, Mr. Jaeger's explosives license was reinstated. On May 14, 2018, the employer allowed Mr. Jaeger to return to the employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

Iowa Administrative Code rule 871-24.32(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.

The evidence in the record establishes that Mr. Jaeger was suspended on March 22, 2018, and discharged on May 10, 2018, for no disqualifying reason. The issue that triggered the Explosives Department to deactivate Mr. Jaeger's explosives license and that prompted both the suspension and discharge was an issue beyond Mr. Jaeger's control. The evidence indicates that the licensing issue had nothing to do with misconduct on the part of Mr. Jaeger. The employer has presented no evidence to establish misconduct. Neither the suspension nor the discharge disqualifies Mr. Jaeger for unemployment insurance benefits. Mr. Jaeger is eligible for benefits provided he meets all other eligibility requirements. The employer's account may be charged.

DECISION:

The April 25, 2018, reference 01, decision is reversed. The claimant was suspended and 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/rvs