

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JERRY D SCHOVILLE**  
Claimant

**APPEAL NO. 14A-UI-04155-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SAPP BROS TRUCK STOPS INC**  
Employer

**OC: 03/23/14**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Jerry Schoville filed a timely appeal from the April 14, 2014, reference 01, decision that disqualified him for benefits. After due notice was issued, a hearing was held on May 8, 2014. Mr. Schoville participated. Shane Macklem, Shop Manager, represented the employer.

**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: Jerry Schoville was employed by Sapp Bros Truck Stops, Inc., as a full-time oil bay supervisor until March 27, 2014, when the employer discharged him for provoking and engaging in a heated, profane exchange with a customer. The incident that triggered the discharge occurred on March 26, 2014. The customer in question had been waiting at the employer's facility for an extended period as a result of purchasing tires from the employer the same day. A supervisor directed Mr. Schoville to service the customer's vehicle next. Mr. Schoville had started or was about to start servicing another customer's vehicle and was unhappy with the directive. Mr. Schoville and the customer ended up in a heated exchange during which the customer chest bumped Mr. Schoville and told Mr. Schoville that he was going to "kick his ass." Mr. Schoville and the customer ended up yelling profanities at one another across the employer's shop. The disruption was loud enough for Shane Macklem, Shop Manager, to hear it while working down a hall on another floor. The employer had previously reprimanded Mr. Schoville for referring to his subordinates as "pieces of shit" and morons.

**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.

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 weight evidence in the record establishes that Mr. Schoville provoked the incident with the customer. The weight of the evidence indicates that Mr. Schoville was an equal participant in the workplace disruption that ensued. This included Mr. Schoville shouting at the customer across the work area, and shouting obscenities with sufficient volume for Mr. Macklem to hear from down a hall on another floor. Mr. Schoville's involvement in the final incident demonstrated a willful disregard in the employer's interests in transacting business in a civil, courteous manner. The final incident followed one or more earlier incidents wherein Mr. Schoville used derogatory, offensive language in addressing and/or referring to subordinates. That conduct also was in willful disregard of the employer's interests.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Schoville was discharged for misconduct. Accordingly, Mr. Schoville is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits.

**DECISION:**

The claims deputy's April 14, 2014, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The employer's account shall not be charged for benefits.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/css