

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DALLAS W KYLE
Claimant

APPEAL NO. 06A-UI-10671-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**TLC AUTO-MARINE SALES
& SERVICE INC**
Employer

**OC: 10/26/06 R: 04
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

TLC Auto – Marine Sales & Service filed a timely appeal from the October 26, 2006, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on November 20, 2006. Claimant Dallas Kyle participated. Office Manager Marlus Turbett represented the employer. The administrative law judge took official notice of Agency records regarding benefits disbursed to the claimant.

ISSUES:

Whether the employer laid off the claimant due to lack of work orders or discharged the claimant. The administrative law judge concludes the employer discharged the claimant.

Whether the claimant was 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: Dallas Kyle was employed by TLC Auto – Marine Sales & Service in Mount Pleasant as a salesperson until September 11, 2006, when owner Curtis Howell discharged him from the employment. Though the employer considered Mr. Kyle a part-time employee, Mr. Kyle worked full-time hours and functioned under the belief that he was a full-time employee. Mr. Kyle's immediate supervisor was Sales Manager Ron Yaley. Mr. Yaley still works for the employer, but did not testify at the hearing. Mr. Kyle suffers from panic attacks. The employer was aware of Mr. Kyle's condition. Mr. Kyle suffered a panic attack during Mount Pleasant's annual Old Threshers' celebration at the beginning of September. In response to that incident, Mr. Kyle contacted a health care provider and was prescribed medication to treat the condition. On September 7, Mr. Kyle contacted Mr. Yaley to notify the employer that he would be off work "a couple days" while he waited for the medication to take effect. Mr. Yaley approved the absence from work and encouraged Mr. Kyle to attend to his health. On Sunday, September 10, Mr. Yaley notified the employer that he would be absent Monday, September 11, due to illness. Mr. Kyle subsequently contacted Mr. Yaley to notify the employer that he would be able to

return to work on Wednesday, September 13. Mr. Yaley called Mr. Kyle back and notified him that the owner, Curtis Howell, had decided on Monday, September 11, that Mr. Kyle would be discharged because of his ongoing mental health issues. Mr. Kyle had been absent from work for three shifts. Though the employer lacks a formal attendance policy, Mr. Kyle had taken steps to notify the employer of his need to be absent due to illness and to update the employer regarding his condition.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether the evidence in the record establishes that Mr. Kyle was discharged or was laid off.

Workforce Development rule 871 IAC 24.1(113) provides, in relevant part, as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

The employer's witness asserted that Mr. Kyle had been laid off and that the separation had nothing to do with a discharge for misconduct. The employer's witness lacked firsthand knowledge of the discussions that took place between Mr. Kyle and Mr. Yaley. Neither Mr. Yaley nor Mr. Howell testified. Mr. Kyle provided credible testimony that Mr. Yaley had notified him that he had been discharged from the employment and that Mr. Yaley had said nothing about a layoff due to a lack of work orders. Based on the evidence in the record, the administrative law judge concludes that Mr. Kyle was discharged, rather than laid off.

The remaining question is whether the evidence in the record establishes that Mr. Kyle 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.

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).

The employer acknowledges and the evidence indicates there was no misconduct on the part of Mr. Kyle. Mr. Kyle's absences were due to illness appropriately reported to the employer and were, therefore, excused absences under the applicable law. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Mr. Kyle's mental health condition certainly did not amount to misconduct.

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

DECISION:

The Agency representative's October 26, 2006, reference 02, decision is affirmed. 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/kjw