

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARLES E SCHMIED
Claimant

APPEAL NO. 07A-UI-06321-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**NORTHWESTERN PLASTICS LTD
INDUSTRIAL SERVICE CORP**
Employer

**OC: 05/27/07 R: 04
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Charles Schmied filed a timely appeal from the June 14, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 11, 2007. Mr. Schmied participated. Linda Tickel, Human Resources Manager, represented the employer and presented additional testimony through Linda Painter, P10 manager.

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: Charles Schmied was employed by Northwestern Plastics as a full-time local truck driver from February 24 to May 30, 2007, when P10 Manager Linda Painter and Vice President Evan Whitcamp discharged him from the employment. The employer runs loads of empty bottles between Burlington and Fort Madison. Mr. Schmied was assigned to the overnight shift.

The final incident that prompted the discharge occurred at 11:30 p.m. on May 24 and came to Ms. Painter's attention on May 25. Mr. Schmied was driving his assigned tractor-trailer out of the production plant lot where he routinely delivered empty bottles. The turn out of the lot was a sharp left. Mr. Schmied made the turn as he ordinarily would. Mr. Schmied was traveling approximately three miles per hour. Based on the nature of the turn, Mr. Schmied could not see the back of his trailer until the trailer straightened out. When the back of the trailer again came into view, Mr. Schmied saw a pole going under the trailer. The pole was there to guide drivers out of the lot. The pole went under the trailer, connected with the trailer and caused significant damage to the trailer. Another driver had changed the position of the tandem axle(s) and pushed them back on the trailer. Mr. Schmied was not aware that the position of the tandem axle(s) had been changed. The change in the axle position affected the path that the trailer took during the turn and resulted in Mr. Schmied misjudging the position of the trailer as he made the turn.

Prior to the final incident, Ms. Painter received a report from another driver that Mr. Schmied had hit and torn off the door of a nearby trailer as he was backing a trailer into a space on the employer's lot. The other employee had not witnessed Mr. Schmied hitting the door, but had concluded Mr. Schmied was the driver responsible because of the proximity of the damaged trailer to the trailer Mr. Schmied had backed in. Mr. Schmied was not aware of damaging the trailer door and believed he would have noticed if he had caused the damage. The area into which Mr. Schmied had been backing his trailer was not well lit and Mr. Schmied may or may not have caused the damage. Though this incident occurred and was reported to the employer prior to the pole incident, Ms. Painter did not issue a warning to Mr. Schmied regarding the matter until May 30, 2007, immediately prior to discharging him from the employment.

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 evidence fails to establish any intentional misconduct on the part of Mr. Schmied. The evidence indicates an accident causing significant damage to the employer’s property on or about May 24. Mr. Schmied was the only witness to that incident that testified at the hearing. Mr. Schmied provided plausible and credible testimony regarding the circumstances of the accident. Without question, the accident occurred. However, the mere fact that the accident occurred does not establish negligence or carelessness on the part of Mr. Schmied. The evidence indicates, instead, that another driver had altered the placement of the tandem axle(s) on the trailer and thereby altered the trailer’s trajectory during a turn. The evidence fails to establish that Mr. Schmied was negligent or careless in connection with the accident and/or the property damage that prompted his discharge. The circumstances of the torn door also fail to establish misconduct on the part of Mr. Schmied. The evidence indicates that no one witnessed that incident. The evidence in the record is insufficient to establish that Mr. Schmied was careless or negligent in backing his trailer, or that he was the person who caused the damage to the door.

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

DECISION:

The Agency representative’s June 14, 2007, 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/kjw