

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**ROBERT L KENNEDY**  
Claimant

**APPEAL NO. 18A-UI-07438-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SIOUX-PREME PACKING CO**  
Employer

**OC: 06/17/18**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Robert Kennedy filed a timely appeal from the July 9, 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. Kennedy was placed on a disciplinary suspension on June 20, 2018 for violation of a company rule. After due notice was issued, a hearing was held on July 27, 2018. Mr. Kennedy participated and presented additional testimony through Keith Gray. The employer did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. Exhibit A was received into evidence.

**ISSUE:**

Whether Mr. Kennedy was suspended and/or discharged for misconduct in connection with the employment that disqualifies him for unemployment insurance benefits and that relieves the employer's account of liability for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Robert Kennedy was employed by Sioux-Preme Packing Company as a full-time Maintenance Supervisor from March 12, 2018 until June 21, 2018, when the employer discharged him from the employment. At the time of the discharge, Mr. Kennedy asked the employer the reason for the discharge, but the human resources representative present told Mr. Kennedy they were not going to go into that and that the company did not need to have a reason to discharge him from the employment during his probationary period. Mr. Kennedy had left a supervisory position at another employment to accept the supervisory position at Sioux-Preme. Other maintenance employees, Mr. Kennedy's subordinates, followed Mr. Kennedy from the former employer to Sioux-Preme. One such employee was Keith Gray. Once in the Sioux-Preme employment, Mr. Kennedy's experience was that maintenance staff worked for Sioux-Preme before his arrival, including a recently demoted maintenance supervisor, went out of their way to undermine him as he performed his maintenance supervisor duties. Mr. Kennedy brought his concerns to the attention of the human resources personnel, but encountered a hostile response from the human resources personnel.

On June 12, 2018, the employer suspended Mr. Kennedy with pay, while the employer purportedly reviewed whether Mr. Kennedy had operated the employer's vehicle without appropriate driving privileges in March 2018. On June 21, 2018, the employer recalled Mr. Kennedy to the workplace and notified him that he was being discharged from the employment. The employer did not reference the alleged driving concern from March. Though the human resources representative declined to discuss the basis for the discharge, Mr. Kennedy's supervisor referenced a purported no-call/no-show absence on May 26, 2018. Mr. Kennedy had not been absent without notice to the employer. Rather, the supervisor had sent Mr. Kennedy home on May 24, 2018, after the supervisor observed that Mr. Kennedy did not look well. On May 25, Mr. Kennedy consulted a doctor, who took him off work through May 28. Mr. Kennedy notified the employer on May 25 that he was dealing with kidney stones and that the doctor had taken him off work through May 28. Mr. Kennedy returned to work on May 29 and brought a medical excuse with him that covered the absence period.

During the week of June 17-23, 2018, Mr. Kennedy made his initial application for unemployment insurance benefits to establish a claim that Iowa Workforce Development deemed effective June 17, 2018. The claim was in response to the discharge, not in response to the paid suspension that preceded the discharge.

#### **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).

The evidence in the record establishes that Mr. Kennedy's unemployment insurance claim was prompted by a June 21, 2018, discharge, not by the paid suspension that preceded the discharge. The evidence in the record does not establish misconduct in connection with the employment. The employer did not participate in the hearing and did not present any evidence to meet its burden of proving a discharge based on misconduct in connection with the employment. The weight of the evidence establishes that the employer elected to discharge Mr. Kennedy for reasons other than misconduct during a time when the employer still considered Mr. Kennedy to be in a probationary employment status. Because the evidence establishes a discharge for no disqualifying reason, Mr. Kennedy is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

**DECISION:**

The July 9, 2018, reference 01, decision is reversed. The claimant was discharged on June 21, 2018 for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs