IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MICHAEL J OCKERMAN
Claimant

ALLSTEEL INC
Employer

APPEAL NO. 17A-UI-03053-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/26/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Michael Ockerman filed a timely appeal from the March 14, 2017, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on the claims deputy's conclusion that Mr. Ockerman was discharged on January 27, 2017 for violation of a known company rule. After due notice was issued, a hearing was held on April 12, 2017. Mr. Ockerman participated. Sandra Linsin of Employers Edge represented the employer and presented testimony through Ashley Steffens. Exhibits 1, 2, 3. 4, 6, 7 and A were received into evidence.

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: Michael Ockerman was employed by Allsteel, Inc. as a full-time utility worker until January 25, 2017, when Ashley Steffens, Member and Community Relations (MCR) Generalist, and John Mumma, MCR Manager, discharged him from the employment for violating the employer's safety protocol. Mr. Ockerman's regular work hours were 7:00 p.m. to 5:00 a.m., Sunday evening through Friday morning. Mr. Ockerman's immediate supervisor was Group Leader Toba Alanda. Mr. Alanda is no longer with Allsteel. Mr. Ockerman's utility duties involved third-shift daily clean-up of the employer's mechanized paint line. The duties included removing any stray parts that fell from the production line hooks during production. Mr. Ockerman had begun the employment as a Production Team Lead (PTL), but was demoted to the utility position in August 2015.

The final incident that triggered the discharge occurred at about 1:00 a.m. on January 18, 2017. At that time, Mr. Ockerman climbed onto a paint line catwalk to remove parts that had gone astray during production. Mr. Ockerman was allowed to be on the catwalk to perform these duties, but was first required to notify a coworker that he was going onto the catwalk and also required to lockout power from the paint line to ensure that no one could turn on the paint line.

In other words, he was required to perform a lockout/tagout. Mr. Ockerman was familiar with these requirements. Though the employer had not drafted a written lockout/tagout protocol specific to the paint line machinery, Mr. Ockerman knew the steps he was required to take to safely retrieve stray parts from the paint line. Mr. Ockerman also knew he could be injured if the paint line mechanism was turned on while he was on the catwalk. Before Mr. Ockerman ascended to the catwalk on January 18, he jokingly stated to coworker Aaron Sindt, that he was going to get the stray parts down and asked Mr. Sindt whether Mr. Sindt could catch the parts. Mr. Ockerman then told Mr. Sindt that he was not going to throw the parts down, but needed to ensure that no one was under the line while he was getting the parts down. Mr. Ockerman had pushed an "e-stop" button to disengage power from the paint line. However, there was nothing to prevent someone else from pushing the "e-stop" button again to reconnect power to the line. Mr. Ockerman had not done a lockout/tagout that would prevent someone from pushing the button. One of Mr. Ockerman's coworkers reported Mr. Ockerman's failure to perform a lockout/tagout to Mr. Alanda the next day. Mr. Alanda collected statements from Mr. Sindt, Jason Douglas and Arulfo Maldonado, but did not collect a statement from Mr. Ockerman. Prior to discharging Mr. Ockerman from the employment on January 25, 2017, Ashley Steffens, Member and Community Relations (MCR) Generalist, questioned Mr. Ockerman on that day about the January 18 incident. Mr. Ockerman admitted that he had been on the catwalk, had not done a lockout/tagout to lock out power to the paint line, but asserted that he could see the "e-stop" button and would be able to yell at anyone who moved toward the "e-stop" button to engage power to the paint line.

In making the decision to discharge Mr. Ockerman in response to the January 18, 2017 incident, the employer also considered prior safety issues from 2015 that had factored in Mr. Ockerman being demoted from Production Team Lead to Utility. In September 2015, Mr. Ockerman suffered injury while transporting a 55 gallon drum with a two-wheel cart. In August 2015, Mr. Ockerman climbed a paint line "cage" to grab stuck parts without performing the required lockout/tagout. Other employees alleged that the line was actually running when Mr. Ockerman climbed the cage. Mr. Ockerman denies the assertion that the line was running, but concedes he should have performed a lockout/tagout.

In making the decision to discharge Mr. Ockerman, the employer also considered a reprimand from July 2016 that was based on Mr. Ockerman raising his voice and using profanity when speaking with a coworker in May 2016 and another incident wherein Mr. Ockerman raised his voice during a disagreement with a coworker.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 of the evidence in the record establishes that Mr. Ockerman knowingly and intentionally failed to perform the appropriate lockout/tagout procedure when retrieving parts from the paint production line on January 18, 2017. Mr. Ockerman was well aware that the restoring power to the line while he was on the catwalk would place him at risk of injury. Mr. Ockerman knew how to perform the work safely, but elected not to perform the work safely. This final incident was not the first time Mr. Ockerman had knowingly violated the lockout/tagout procedure. These two lockout/tagout violations are sufficient to demonstrate an intentional and substantial disregard of the employer's interests in maintain a safe, injury-free workplace.

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

DECISION:

The March 14, 2017, reference 01, decision is affirmed, but the discharge date is corrected to January 25, 2017. The claimant was discharged for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until he has worked in and paid wages for insured work equal to ten times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs