

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**LEVI W WRIEDEN**  
Claimant

**ALLSTEEL INC**  
Employer

**APPEAL NO. 20A-UI-02022-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/09/20**  
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the February 24, 2020, reference 01, decision that allowed benefits to the claimant provided he met all other eligibility requirements and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on February 10, 2020 for no disqualifying reason. After due notice was issued, a hearing was held on April 20, 2020. Claimant Levi Wrieden participated. Sandra Linsin of Employers Edge represented the employer and presented testimony through Brittany Dirks and Rachel Cox. Exhibits 1, 2 and 5 were received into evidence. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

**ISSUES:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

Whether the claimant was overpaid unemployment insurance benefits.

Whether the claimant must repay overpaid benefits.

Whether the employer's account may be charged.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Levi Wrieden worked for Allsteel, Inc. during two distinct periods that were separated by a period of employment with a sister company. The most recent Allsteel employment began in mid-2019. Mr. Wrieden last performed work for the employer on January 30, 2020. Mr. Wrieden was employed as a full-time Advanced Maintenance Technician. His usual work hours were 4:00 p.m. to midnight, Monday through Friday. Mr. Wrieden was responsible for performance preventive maintenance on machines throughout the production plant and completed work orders authorized and signed by his supervisor, Jordan Egger, Skilled Trades Manager. Mr. Wrieden was authorized to take a 30-minute lunch break and two paid 15-minute breaks

during his shift. Mr. Wrieden was authorized to schedule his breaks consistent with business needs. Mr. Egger was in a separate building and did not directly monitor Mr. Wrieden's daily work activities.

On January 28, 2020, Mr. Wrieden made a complaint to Mr. Egger in which he asserted that someone had "messed with" his inbox, had turned his work cart around, and that he was missing tools. Mr. Egger thereafter reviewed video surveillance for the period beginning January 20, 2020. Mr. Egger did not find evidence of anyone interfering with Mr. Wrieden's inbox, work cart, or tools. However, Mr. Egger observed periods when Mr. Wrieden and other staff engaged in non-work related activities in the maintenance shop, such as watching videos. Mr. Wrieden brought his personal notebook computer to the workplace and used it both for working on work-related reports and for non-work related activities. When Mr. Egger reviewed the surveillance record of concern, he identified three days in which Mr. Wrieden repeatedly engaged in non-productive activity multiple times during the workday. Some of the times included break times that expanded well beyond those authorized by the employer.

On January 30, 2020, Brittany Dirks, Member and Community Relations Business Partner, and Mr. Egger met with Mr. Wrieden to discuss their findings with him. During that interaction, Mr. Wrieden conceded he had at times acted inappropriately by engaging in non-work related activity during work hours. Mr. Wrieden indicated remorse for his non-work related conduct. Mr. Wrieden advised the employer that he would switch between work activities and non-work activities when using his notebook computer, that some of his idle time occurred when he was waiting for a coworker to assist with a two-person project or waiting for a machine he needed to perform work on to become available, and that some of idle time resulted from the employer's directive that he not start a project he could not complete the same day. The employer had previously counseled Mr. Wrieden not to be engaging with the production staff on the production floor in a manner that interfered with their work and this led to Mr. Wrieden spending more time in the maintenance shop. Mr. Wrieden identified a need for better communication between the maintenance staff and operations leadership. The employer deemed Mr. Wrieden to have violated the employer's integrity policy and to have falsified his time-card by reporting the unproductive time as work time. Mr. Wrieden had received no prior reprimands for similar conduct. Mr. Wrieden had not received an employee handbook in connection with the most recent period of Allsteel employment, had discerned that he lacked access to the handbook via the employer's ADP intranet, but had not asked the employer to restore his access. The employer suspended Mr. Wrieden on January 30, 2020. On February 9, 2020 he was discharged from the employment.

## **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 weight of the evidence establishes a discharge for no disqualifying reason. The employer had legitimate concerns about Mr. Wrieden engaging in non-productive behavior at times when he could have been engaged in "value-added" behavior during the four days the employer identified as dates of concern. However, the employer presented insufficient evidence to rebut Mr. Wrieden's testimony that some of the time the employer counted as non-productive was consolidated break time, was time spent waiting for the opportunity to perform specific assigned tasks, or was impacted by prior directives not to loiter on the production floor. The employer elected not to present as evidence for the hearing the video surveillance the employer indicates was the foundation for the employer's decision-making process and the employer's case. The employer thereby denied the administrative law judge the opportunity to weigh that important

evidence. Both parties identified a need for greater oversight and better communication of expectations in the employment relationship. The evidence does not rise to the level of demonstrating a willful and wanton disregard of the employer's interests. Accordingly, the claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

**DECISION:**

The February 24, 2020, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The discharge was effective February 9, 2020. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in dark ink on a light-colored background.

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James E. Timberland  
Administrative Law Judge

April 21, 2020  
Decision Dated and Mailed

jet/scn