

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**PAUL R BATEMAN
124 S WISCONSIN
PO BOX 99
HUBBARD IA 50122**

**MIDWEST PRIDE SYSTEM LLC
19828 – 310TH ST
HUBBARD IA 50122**

**Appeal Number: 06A-UI-06652-JT
OC: 10/23/05 R: 02
Claimant: Appellant (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

Paul Bateman filed a timely appeal from the June 21, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 18, 2006. Mr. Bateman participated and presented additional testimony through his wife, Barbara Bateman. The employer had notice of the hearing, but did not participate. Claimant's Exhibits A through O, R and S were received into evidence. The employer did provide exhibits for the hearing and Employer's Exhibits One through Four, Six, Seven, and Nine were received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Paul Bateman was employed by Midwest Pride Systems as the Director of Marketing from October 2001 until September 15, 2005, when owner/partner Curt Bunte discharged him. The

employment was part-time and Mr. Bateman dedicated approximately 30 hours per week to the employment. During the employment, Mr. Bateman also operated a separate business, whereby he bought product from Midwest Pride Systems at wholesale and resold the product at retail. Mr. Bateman's spouse assisted with the separate business, Bateman Enterprises. Bateman Enterprises maintained a customer database that was separate from the accounts Mr. Bateman generated on behalf of Midwest Pride Systems.

At the time of the discharge, the employer indicated the discharge was based on the employer's need for a full-time Director of Marketing and Mr. Bateman's refusal to change from part-time to full-time employment. Mr. Bateman's successful side business prevented him from being able to work full-time on behalf of the employer. Until a few months prior to the discharge, Mr. Bateman's employment had been supervised by owner/partner Al Doering. A few months prior to the discharge, owner/partner Curt Bunte assumed supervision of Mr. Bateman's employment. Under Mr. Doering's supervision, Mr. Bateman had been able to successfully market the employer's product and successfully operate his side business. Once Mr. Bunte assumed oversight of Mr. Bateman's employment, Mr. Bunte became concerned with possible conflicts of interests connected with Mr. Bateman's operation of the side business. Mr. Bunte was specifically concerned about a decrease in the employer's business first noted in June 2005. Though these same potential or actual conflicts had existed while Mr. Doering supervised the employment, Mr. Bateman and Mr. Doering had been able to resolve them on an ad hoc basis.

REASONING AND CONCLUSIONS OF LAW:

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

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 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 evidence in the record fails to establish, by a preponderance of the evidence, that Mr. Bateman was discharged for misconduct. The employer's evidence is limited to allegations contained in the exhibits. The employer elected not to participate and, thereby, failed to provide more direct and satisfactory evidence that might have corroborated or supported the allegations of misconduct. Though Mr. Bateman's operation of a separate business may well have given rise to legitimate concerns on the part of the employer, the evidence in the record does not establish that Mr. Bateman acted with willful or wanton disregard of the interests of the employer or otherwise engaged in misconduct that would disqualify him for unemployment insurance benefits.

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

DECISION:

The Agency representative's June 21, 2006, 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.

jt/pjs