

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID T CARRUTHERS

Claimant

APPEAL NO. 09A-UI-15455-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARZETTI FROZEN PASTA INC

Employer

**Original Claim: 09/13/09
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Marzetti Frozen Pasta, Inc. (employer) filed a timely appeal from a representative's decision dated October 5, 2009, reference 01, which found the David Carruthers (claimant) eligible to receive unemployment insurance benefits. After due notice was issued, a telephone hearing was held on November 16, 2009. The claimant participated personally. The employer participated by Mr. Tom Kuiper, representative, and witnesses Cindy Cockerham, Gwen Harvey, and Steve Bowers. Exhibits One through Four were received into evidence.

ISSUE:

At issue is whether the claimant was discharged for a current act of misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: The claimant was employed by Marzetti Frozen Pasta as a quality assurance analyst from November 13, 2007, until September 14, 2009, when he was discharged from employment. Mr. Carruthers was employed full-time and was paid by the hour. His immediate supervisor was Gwen Harvey.

Mr. Carruthers had been placed on a five-day disciplinary suspension on September 3, 2009, after he sent an e-mail to his supervisor, Gwen Harvey, on September 2, 2009, that conveyed what the employer reasonably considered to be an insubordinate and aggressive tone. In the e-mails, Mr. Carruthers was complaining about the treatment he perceived he was receiving from his supervisor, Ms. Harvey. Ms. Harvey had given the claimant reasonable work-related directives and Mr. Carruthers was disputing some of Ms. Harvey's decisions on the e-mails. Mr. Carruthers' e-mails included such statements as: "When do you think you could treat me like a human being and not some dog you found along the road," "You're not winning my heart and mind over very fast," and "Okay I'll quit doing my job." Based upon Mr. Carruthers' statements to his supervisor via e-mail and what was reasonably perceived as Mr. Carruthers' unwillingness to follow his supervisor's directives, the decision was made to suspend Mr. Carruthers for his conduct.

While Mr. Carruthers was on suspension, the employer investigated and determined that Mr. Carruthers, in the past, had verbalized dissatisfaction with Ms. Harvey's management style. Mr. Carruthers' rhetorical complaints that he muttered after receiving directives from Ms. Harvey had

been overheard by another worker, Ms. Cockerham, who had an adjoining work area. Based upon the inappropriateness of the comments that Ms. Cockerham had described, the employer made a management decision not to allow Mr. Carruthers to return to work after his suspension but instead to discharge him.

The claimant had experienced difficulty in adapting to Ms. Harvey's management style and had gone to the company's human resource department prior to his suspension for assistance in resolving the problems between himself and his supervisory, Ms. Harvey.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes a current act of misconduct sufficient to warrant the denial of unemployment insurance benefits. 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.

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 insurance benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant the denial of 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 employer. 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 upon past acts. The termination of employment must be based upon a current act. See 871 IAC 24.32(8).

The evidence in this case establishes that the employer was aware that Mr. Carruthers had often displayed an aggressive attitude toward his supervisor after being given work directives that Mr. Carruthers did not agree with. The employer was aware that Mr. Carruthers and his supervisor had personalities that did not work well together and Mr. Carruthers believed that Ms. Harvey was being unduly critical of him. The company was aware that Mr. Carruthers had responded to Ms. Harvey and her directives in an abrupt and challenging manner on numerous occasions. The employer chose to issue Mr. Carruthers a five-day suspension as a final warning to either improve his demeanor and cooperation or be discharged.

While the claimant was on suspension, the employer discovered past acts by the claimant during which Mr. Carruthers vented his dissatisfaction by verbalizing a myriad of rhetorical statements about his supervisor and her directives. Although no further act of misconduct took place since the time the claimant was placed on suspension, a decision was nevertheless made to discharge Mr. Carruthers from his employment.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The question before the administrative law judge in this case is not whether the employer has the right to discharge Mr. Carruthers for these reasons but whether the discharge is disqualifying under the provisions of the Iowa Employment Security Act. While the decision to terminate Mr. Carruthers may have been a sound decision from a management viewpoint, no further acts of misconduct had taken place since the claimant had been suspended and the conduct discovered by the employer was of a similar nature as the reasons for the claimant's initial suspension. As the claimant had engaged in no further act of misconduct, benefits are allowed.

DECISION:

The representative's decision dated October 5, 2009, reference 01, is affirmed. The claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw