

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMES M BAUDENDISTEL**  
Claimant

**APPEAL NO. 15A-UI-03155-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PACKERS SANITATION SERVICES INC**  
Employer

**OC: 02/01/15**  
**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 26, 2015, reference 01, decision that that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant had been discharged on February 4, 2015 for no disqualifying reason. After due notice was issued, a hearing was held on April 16, 2015. The claimant participated. William Ortwine represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits One through Seven 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: The employer provides cleaning services to the Tyson plant in Storm Lake. The claimant was employed as a full-time third-shift supervisor until February 3, 2015. The claimant was assigned to supervisor 10 or 11 sanitation employees. The employees were spread throughout the plant. When the claimant appeared for work on February 3, the Tyson plant superintendent notified the claimant that he was barred from the Storm Lake Tyson plant because the superintendent was dissatisfied with his work performance. One of the claimant's supervisors was present for the meeting. The barment was prompted by a recent incident in which employees under the claimant's supervision had performed substandard cleaning work. Prior to the barment, the claimant had acknowledged the superintendent's concerns and had reassured the superintendent that he would address the concern. Because the claimant supervised employees spread throughout the plant, it was not always possible to closely track the performance of a particular employee while the claimant was working in a different area of the plant. The claimant had attempted to enforce cleaning standards.

At the time the superintendent directed the claimant to gather his personal affects and vacate the plant, the claimant complied with that directive. The claimant's supervisor said nothing to

the claimant regarding the possibility of another assignment at another facility. The employer had no other customers in Storm Lake. While the employer alleges it made attempts to reach the claimant regarding further possible work, the claimant received no such contact or notice of such contact. The claimant concluded that he was discharged from the employment. The employer subsequently documented an alleged voluntary quit based on alleged three days of no-call/no-show, but the claimant had no workplace to appear during the three days in question.

The claimant established a claim for benefits and received benefits. The employer participated in the fact-finding interview.

## **REASONING AND CONCLUSIONS OF LAW:**

The employer has not presented sufficient evidence to establish a voluntary quit. The weight of the evidence indicates that the claimant was involuntarily separated from his work duties on February 3, 2015. The employer had not provided the claimant with another work assignment. The claimant had reasonably concluded that he had been discharged from the employment.

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.

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 evidence in the record fails to establish misconduct in connection with the employment that would disqualify the claimant for benefits. The evidence in the record establishes an incident wherein one or more of the claimant's subordinates failed to perform their work duties to the sanitation standards required by the Tyson management. The employer has presented insufficient evidence to establish that substandard performance of the claimant's subordinates were attributable to a lack of oversight on the part of the claimant. Even if the evidence had established negligence on the part of the claimant in connection with the incident that triggered the barment, the evidence is insufficient to establish a pattern of negligence indicating a willful or wanton disregard of the employer's interests.

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

**DECISION:**

The February 26, 2015, reference 01, decision is affirmed. 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.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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