

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ABDULLAHI M OSMAN**  
Claimant

**APPEAL NO. 15A-UI-02855-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FAWN MANUFACTURING INC**  
Employer

**OC: 02/08/15  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Abdullahi Osman filed a timely appeal from the March 2, 2015, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that he had been discharged on February 5, 2015 for misconduct in connection with the employment. After due notice was issued, a hearing was held on April 1, 2015. Mr. Osman participated. Annette Cook, Human Resources, represented the employer. Somali-English interpreter Ibrahim Abukar assisted with the hearing.

**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: Abdullahi Osman was employed by Fawn Manufacturing as a full-time laborer from June 2014 until February 9, 2015, when Mark Donahue, Plant Manager, discharged him for allegedly fighting on the job. The incident that triggered the discharge occurred on February 4, 2015. On February 4, 2015, a coworker struck Mr. Osman. Mr. Osman did not strike the coworker. Mr. Osman reported the incident to a supervisor. The February 4 incident had started with the coworker intentionally shining a light in Mr. Osman's eyes. The incident on February 4 was the second time the coworker had struck Mr. Osman and the second time Mr. Osman had reported the coworker's conduct to the employer. On February 5, a supervisor suspended Mr. Osman from the employment pending further investigation of the matter. The coworker who struck Mr. Osman and two other employees who may have been friends of that coworker provided written statements in which they alleged that Mr. Osman had instigated the physical contact. Additional employees had been present for the incident, but did not provide statements.

## 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 employer presented insufficient evidence, and insufficiently direct and satisfactory evidence, to prove misconduct in connection with the employment by a preponderance of the evidence. The employer did not present testimony from anyone with personal knowledge of the incident that triggered the discharge. The employer did not provide testimony from anyone involved in the investigation of the matter. The employer had the ability to present such testimony, but elected not to present such testimony. The employer presented insufficient evidence to rebut the claimant's testimony that he did not instigate the altercation on February 4 and did not strike the coworker.

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 March 2, 2015, 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.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/pjs