

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMES H PINGEL**  
Claimant

**APPEAL NO. 10A-UI-08148-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VAN DIEST SUPPLY CO**  
Employer

**OC: 04/25/10**  
**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 May 27, 2010, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on July 22, 2010. Claimant participated. Clark Vold, Director of Manufacturing, represented the employer and presented additional testimony through Carolyn Cross, Personnel Manager. Exhibits One through Seven were received 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: James Pingel was employed by Van Diest Supply Company as a full-time shipping and receiving operator from 1992 until April 26, 2010, when Clark Vold, Director of Manufacturing, discharged him from the employment.

The final incident that triggered the discharge came to the employer's attention on April 23, 2010, when a customer in Australia called to complain it had not received its full shipment from Van Diest. The shipment had been loaded and shipped on March 30, 2010. Mr. Vold located a pallet that belonged to the shipment in a shipping staging area. Someone had set the pallet aside and the pallet had not been loaded into the truck with the rest of the shipment. The particular load had sat in the staging area for about a month before it was shipped. Day shift employees had loaded the shipment. When Mr. Pingel became involved in the load, he believed that all that was left was to build the bulkhead that would keep the loaded materials from shifting. The materials were tightly loaded to the top of the trailer and it was not possible for Mr. Pingel to confirm all items had been loaded without unloading the shipment. Mr. Pingel signed documentation to indicate that load was complete, not knowing that it was not. Mr. Pingel was responsible for making certain the load was complete. At the time Mr. Pingel became involved the shipment and truck were no longer in the staging area, but had been

moved to another building. The employer had to pay substantial additional freight expense to ship the omitted pallet to the customer.

The final incident followed an incident in February 2010, wherein Mr. Pingel got interrupted while counting the number of items in a shipment, lost count, and shipped 24 pallets instead of the called for 22 pallets of product for shipment. Later documentation completed by the employer erroneously stated that an insufficient number of pallets had been shipped, when in fact the problem was that two additional pallets had been shipped. In September 2009, Mr. Pingel relied upon a dispatcher's notation on shipping paperwork and erroneously loaded two drums of one material when the bill of lading called for two drums of another material.

Mr. Pingel would load from five to 10 or more shipments per shift.

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

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 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 weight of the evidence in the record establishes that Mr. Pingel was careless to a degree in connection with his involvement in the March 30 load that triggered his discharge from the employment. Mr. Pingel assumed the entire load was in the trailer without going to the staging area to make certain that everything meant for that shipment had been loaded. The question remains whether Mr. Pingel would have noticed the misplaced pallet if he had gone to the staging area. The weight of the evidence indicates a degree of carelessness in February 2010, when Mr. Pingel lost count on the number of pallets and sent two extra pallets of product. The evidence also establishes a degree of carelessness in September when Mr. Pingel relied upon handwritten notes from a dispatcher, rather than the bill of lading and loaded the wrong drums of product. The evidence indicates that Mr. Pingel otherwise had a long, successful employment, during which he loaded several shipments per day without incident. The evidence fails to establish an intentional disregard of the employer's interests. The evidence also fails to establish a pattern of negligence or carelessness indicating such disregard. On the contrary, the evidence establishes that Mr. Pingel performed his duties to the best of his ability, but was subject to making rare, isolated mistakes.

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

**DECISION:**

The Agency representative's May 27, 2010, 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

jet/pjs