

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MAMER A AROU
Claimant

APPEAL NO. 15A-UI-06852-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA PREMIUM BEEF LLC
Employer

OC: 05/24/15
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 12, 2015, reference 02, decision that disqualified the claimant for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that the claimant had been discharged on May 23, 2015 for misconduct in connection with the employment. After due notice was issued, a hearing was held on August 13, 2015. The claimant participated and presented additional testimony through Tom Weber. Doug Baker represented the employer. Dinka-English Interpreter Diar Diar 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: The claimant is originally from South Sudan, has been in the United States for 15 years, is a non-native English speaker, but has functional English language skills. The claimant was employed by Iowa Premium Beef, L.L.C., as a full-time beef processing line worker from September 2014 until May 23, 2015, when the employer suspended the claimant. The employer subsequently discharged the claimant from the employment.

The sole incident that factored in the discharge occurred on May 23, 2015. On that day, the claimant became upset when a supervisor verbally reprimanded him for allegedly failing to perform his meat cutting duties properly. The claimant attributable the underlying problem to a coworker who handled the meat product before the claimant and who the claimant believed was not performing his meat cutting duties appropriately. When the claimant took issue with the supervisor's reprimand, the supervisor directed the claimant to go to the office. The claimant went to the office and met with Doug Baker, Director of Operations. When Mr. Baker attempted to inquire into the matter, the claimant became upset that the employer was not speaking to the supervisor who had been involved in the production floor incident. At one point, the claimant got up to leave, but sat back down at the conference table. At no time did the claimant employ

profanity or threaten the employer. Though the claimant spoke in an animated manner and used his hands to gesture, at no time did the claimant behave in a physically aggressive manner. The employer had to ask the claimant repeatedly to calm down. The claimant did eventually calm down. Despite that, the employer decided to summon the claimant and have him escorted from the property as part of a suspension. The employer subsequently notified the claimant that he was discharged from the employment.

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).

An employer has the right to expect decency and civility from its employees and an employee’s use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. Henecke v. Iowa Department of Job Service, 533 N.W.2d 573 (Iowa App. 1995).

Continued failure to follow reasonable instructions constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employee’s failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See Woods v. Iowa Department of Job Service, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer’s request in light of the circumstances, along with the worker’s reason for non-compliance. See Endicott v. Iowa Department of Job Service, 367 N.W.2d 300 (Iowa Ct. App. 1985).

The evidence in the record fails to establish misconduct in connection with the employment. The discharge was based on an isolated incident wherein the claimant believed he had been unjustly reprimanded by a supervisor based on a coworker’s failure to properly perform the coworker’s duties. The claimant complied with a directive to meet with the director of human resources, but was upset during that meeting that the supervisor who had reprimanded the claimant was not present for the meeting and that employer was not addressing the claimant’s underlying concern. Though the claimant was agitated and animated, the claimant did not use profanity, did not threaten the employer, and did not engage in any physically aggressive conduct. The claimant calmed down after being directed multiple times to do so. The employer elected to suspend and discharge the claimant from the employment.

While it was within the employer’s discretion to end the at-will employment, the evidence fails to establish misconduct in connection with the employment. 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 June 12, 2015, reference 02, 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/css