

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEITH L JENSEN
Claimant

APPEAL NO. 19R-UI-09915-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EQUISTAR CHEMICALS LP
Employer

OC: 10/06/19
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

This matter came before the administrative law judge based on an Employment Appeal Board remand in Hearing Number 19B-UI-08543 and claimant Keith Jensen's timely appeal from the October 23, 2019, reference 01, decision. The reference 01 decision disqualified Mr. Jensen for unemployment insurance benefits and relieved the employer's account of liability for benefits, based on the deputy's conclusion that Mr. Jensen was discharged on October 9, 2019 for wanton carelessness in performing his work. After due notice was issued, a hearing was held on January 13, 2020. Mr. Jensen participated. The employer did not participate in the appeal hearing. The employer did not comply with the hearing notice instructions to register a telephone number for the hearing and did not otherwise provide the Appeals Bureau with a telephone number where an employer representative could be reached for 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: Keith Jensen was employed by Equistar Chemicals, L.P. as a full-time Operations Technician from 2017 until October 9, 2019, when the employer discharged him and a coworker from the employment. Mr. Jensen's duties involved responding to a radio and telephone directives to open and close valves attached to 13 furnaces and two boilers in support of the employer's production of ethylene. The production process included temperatures of 2000 degrees Fahrenheit. From June 2019 until the discharge date, the employer scheduled Mr. Jensen to work 13 consecutive 5:00 p.m. to 5:00 a.m. shifts followed by one day off and then another 13 consecutive 5:00 p.m. to 5:00 a.m. shifts. The sole incident that factored in the discharge occurred between 3:30 a.m. and 4:00 a.m. on October 8, 2019. At that time, Mr. Jensen and a coworker made multiple valve moves pursuant to a checklist, but mistakenly left one valve open. That one open valve left air going into a furnace and could have caused an explosion during a subsequent shift. Mr. Jensen attributes the error to the number of hours he had been working and fatigue.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)(a) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

The evidence in the record establishes a discharge for no disqualifying reason. The employer did not participate in the appeal hearing and did not present any evidence to meet its burden of proving a discharge based on willful and wanton disregard of the employer's interests. The evidence in the record establishes no such willful and wanton disregard. Rather, the evidence in the record establishes a discharge based on a single, unintentional error. Though the consequences of the error could have been catastrophic, the employer presented no evidence to prove wanton carelessness, rather than an isolated, good faith, human error. Accordingly, Mr. Jensen is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits.

DECISION:

The October 23, 2019, reference 01, decision is reversed. The claimant was discharged on October 9, 2019 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/scn