

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

LEROY E JUDD
Claimant

APPEAL NO. 18A-UI-04562-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CNH AMERICA LLC
Employer

OC: 03/18/18
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Leroy Judd filed a timely appeal from the April 9, 2018, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on the Benefits Bureau deputy's conclusion that Mr. Judd was discharged on March 15, 2018 for failure to follow instructions in the performance of his job. After due notice was issued, a hearing was held on May 7, 2018. Mr. Judd participated and presented additional testimony through Doug Brown. The employer did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate.

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: Leroy Judd was employed by CNH America, L.L.C. as a full-time Materials Specialist from 2013 until March 20, 2018, when a human resources representative discharged him from the employment. On March 15, 2018, Joe Sterba, Assembly Line Supervisor, suspended Mr. Judd from the employment for allegedly failing to comply with a directive to complete a parts decanting task. The decanting process involved transferring parts from a large container into smaller containers that could be taken to the production line and provided to the welders so that they could continue production. A lead person, Rachele Holdifer, instructed Mr. Judd to decant the parts. Mr. Judd took time away from his regular duties of delivering parts to the line to decanted sufficient parts to keep the welders in production. A small quantity of parts remained in the larger container. The lead person contacted Mr. Judd by radio and directed him to complete the decanting process. Mr. Judd returned to performing his regular duties with the intention of returning to the decanting when time allowed. The lead person was not satisfied with this response and notified Mr. Sterba of the situation. Mr. Sterba directed Mr. Judd to decant the parts and Mr. Judd responded that he would finish the task when time allowed. Mr. Sterba summoned a union representative and repeated the same conversation in the presence of the union representative. Mr. Sterba then suspended Mr. Judd from the employment. On March 20, 2018, a human resources representative telephoned Mr. Judd and told him he was

discharged from the employment. The human resources representative referenced a last chance notice that Mr. Judd had signed a year earlier.

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).

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 employer presented no evidence to meet its burden of proving a discharge based on misconduct in connection with the employment. The evidence establishes that the lead person and Mr. Sterba issued a directive to Mr. Judd. The employer presented no evidence to establish that the directive was reasonable in the context of Mr. Judd's need to complete his regular duties. The evidence fails to establish that Mr. Judd fully refused the directive. Rather, the evidence establishes that Mr. Judd indicated an intention to return to the task when time allowed in the context of performing his regular duties. Even if Mr. Judd had refused the directive, the employer presented no evidence to prove that the position he took was unreasonable under the circumstances. Mr. Judd had completed enough of the decanting task to supply with welders with parts and then returned to his regular duties with the intention of decanting the remainder of the large container when time allowed. An employee's prioritizing of competing work duties differently than the employer would have prioritized them is not necessarily misconduct. See *Richers v. Employment Appeal Board*, 479 N.W.2d 308, 312 (Iowa 1991).

The evidence establishes that Mr. Judd was suspended and discharged for no disqualifying reason. Mr. Judd is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The April 9, 2018, reference 01, decision is reversed. The claimant was suspended on March 15, 2018 and discharged on March 20, 2018 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/rvs