

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RYAN C JONES
Claimant

APPEAL NO. 14A-UI-06055-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

A-LERT
Employer

OC: 03/23/14
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Ryan Jones filed a timely appeal from the May 28, 2014, reference 01, decision that disqualified him for benefits. After due notice was issued, a hearing was held on July 3, 2014. Mr. Jones participated. Brenda Wooten represented the employer. 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: Ryan Jones was employed by A-Lert as a full-time millwright during two distinct periods. The most recent period of employment began in November 2013 and ended on March 21, 2014, when the employer discharged him from the employment. Mr. Jones was assigned to an ADM facility in Peoria. Jeff Mibbs was Mr. Jones supervisor. Mr. Mibbs discharged Mr. Jones from the employment after Mr. Jones accidentally spilled a small amount of paint on a concrete roof area. The spill occurred on March 20. Mr. Jones attempted to clean the paint from the roof at the time by wiping up as much paint as he could. Mr. Jones did not report the spill to Mr. Mibbs. The ADM facility was preparing to apply a sealant to the roof and concluded the sealant would not adhere to the area where the paint had been spilled. Mr. Jones was unaware of the plans to seal the roof. When the ADM staff observed the spilled paint, Mr. Jones was directed to clean up the paint. Mr. Jones used a sander and grinder to remove the paint from the concrete roof surface.

The next most recent incident of note in the employment occurred on March 7, 2014, when Mr. Jones' coworker failed to properly tie himself off while performing elevated work. Mr. Jones had been working 50 feet away from the coworker and did not see that the coworker had failed to tie himself off. Mr. Jones was required to report any unsafe conduct.

The next most recent incident of note occurred in February 2014, when Mr. Jones used a “choker,” a piece of equipment to lift a 500 pound gear box and forgot to properly secure the choker to the gearbox.

The next most recent incident of note occurred in November 2013, when the employer concluded that Mr. Jones was performing work in an unsafe manner.

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.

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 did not present testimony from anyone with personal knowledge if the events that factored in the discharge.

The evidence in the record establishes a discharge that was triggered by a minor paint spill accident in a relatively remote area of the ADM facility. Mr. Jones was unaware of the plans to seal the roof. Mr. Jones made a good faith error in judgment when he wiped up the paint to the best of his ability and then moved on to other work without reporting the spill to his supervisor. The good faith error in judgment did not rise to the level of carelessness or negligence and cannot serve as a basis for a finding of disqualifying misconduct. The employer had presented insufficient evidence to establish that Mr. Jones had any culpability in connection with the coworker not properly tying himself off. Mr. Jones was negligent in failing to secure the choker in February 2014. The employer has presented insufficient evidence to establish that Mr. Jones was careless or negligent in connection with the alleged safety violation in November 2013. Thus, even if the paint spill had indicated carelessness or negligence, the evidence in the record is insufficient to establish a pattern of carelessness or negligence sufficient to indicate a willful or wanton disregard of the employer’s interests.

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

DECISION:

The claims deputy’s May 28, 2014, 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/css