

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN J GOEKE
Claimant

APPEAL NO. 12A-UI-02242-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NEXTERA ENERGY DUANE ARNOLD LLC
Employer

OC: 01/15/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(8) – Misconduct/Current Act

STATEMENT OF THE CASE:

Nextera Energy Duane Arnold, L.L.C. filed a timely appeal from a representative's decision dated February 22, 2012, reference 04, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on March 21, 2012. Although duly notified, the claimant did not respond to the notice of hearing and did not participate. Participating on behalf of the employer was Ms. Marcy Schneider, Hearing Representative, and witness, Heather Maloney-Fuller, Human Resource Manager. Employer's Exhibits One and Two were received into evidence.

ISSUE:

The issue is whether the claimant was discharged for a current act of misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Brian Goeke was employed by the captioned company from September 6, 2011 until January 16, 2012 when he was discharged from employment. Mr. Goeke worked as a full-time instrument control technician and was paid by the hour. His immediate supervisor was Steve Bartnicki.

Mr. Goeke was discharged when the employer concluded that he had exceeded the permissible number of attendance infractions allowed a probationary employee. The claimant had called in sick on October 11, 2011 and had received a warning on October 12, 2011. The final attendance infraction that caused the claimant's discharge took place when the claimant failed to report to work on December 7, 2011 and did not call or report his impending absence. The claimant was allowed to continue working for approximately five weeks until January 16, 2012 when a decision was made to terminate him from his employment based upon his attendance violation that had taken place on December 7, 2011.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes the claimant was discharged for a current act of misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in this matter. See Iowa Code § 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. 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. of Appeals 1992).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based upon such past acts. The termination of employment must be based on a current act. See 871 IAC 24.32(8).

The evidence in the record establishes the claimant was discharged for violation of the company's attendance policy and that he had been warned. The evidence in the record further establishes that the most recent infraction of the company's attendance policy took place more than five weeks prior to the claimant's discharge from employment. The claimant failed to report or provide notification on December 7, 2011 but was not discharged until January 16, 2012. Although the administrative law judge is cognizant that the delay was occasioned by paperwork and the change of supervisors, the administrative law judge nevertheless concludes that there was not a current act of misconduct sufficient to warrant the denial of unemployment insurance benefits at or near the time of the claimant's discharge. The employer was aware of the final event that caused the claimant's termination but did not act upon it in a timely manner. Claimant was allowed to continue working for approximately five weeks and then was discharged for an act that had occurred a substantial period of time in the past. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated February 22, 2012, reference 04, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs