

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KYLE C CHRISTIE
Claimant

APPEAL NO. 11A-UI-10860-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA MOLD TOOLING CO INC
Employer

**OC: 01/30/11
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

Iowa Mold Tooling Company, Inc. filed a timely appeal from a representative's decision dated August 8, 2011, reference 02, which held the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a telephone hearing was held on September 12, 2011. The claimant participated personally. Participating as a witness for the claimant was Sylvia Hayworth, fellow employee. The employer participated by Ms. Dawn Gamerdinger, human resource administrator, and Mr. Mitchell Johnson, production manager.

ISSUE:

At 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: Kyle Christie was employed by Iowa Mold Tooling Company, Inc. from June 8, 2005, until July 14, 2011, when he was discharged from employment. Mr. Christie held the position of full-time painter aide and was paid by the hour. His immediate supervisor was Mitchell Johnson, production manager.

The claimant was suspended from work on July 7, 2011, and officially terminated by letter on July 14, 2011, for an incident that took place on June 30, 2011. On June 30, 2011, Mr. Christie left work approximately 45 minutes before the scheduled end of his work shift, believing that he was authorized to leave one hour early because he had started working that morning one hour earlier than other department employees. Mr. Christie had been requested to start one hour earlier and it was his belief that he was authorized to leave one hour before the end of the shift because he had completed the number of working hours required that day by starting early. The practice had occurred on many occasions in the company's paint department, and the claimant was not aware of any change in company policies that would prohibit him from following the rule that had previously been in place.

Approximately 10 to 15 minutes after his leaving, Mr. Christie received a text message from another employee who indicated that the claimant's supervisor was dissatisfied because the claimant had left work early. Immediately upon that notification, Mr. Christie returned to Iowa Mold Tooling Company, Inc. Although the claimant explained his reasons for leaving early, his supervisor indicated the matter would be referred to the company's human resource department. The claimant did not believe that his employment was in jeopardy, because he had seen Mr. Johnson in a break room area as he was leaving the employment on the afternoon of June 30 and Mr. Johnson did not object.

Mr. Christie was allowed to continue working after returning on June 30 for the remainder of the day and allowed to continue to report for scheduled work until June 7, 2011, when he was suspended pending his official discharge.

It is the employer's position that the rule on leaving early after starting early was changed in company policy in January 2011 and that the claimant's leaving early on June 30, 2011, was therefore categorized as "walking off the job," which is classified as a work offense that can result in immediate termination from employment. The employer had no explanation as to why the claimant was allowed to resume working June 30, 2011, and why his discharge did not take place until a substantial period of time had elapsed.

REASONING AND CONCLUSIONS OF LAW:

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

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.

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 bears 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 the 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 App. 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 past acts. The termination of employment must be based upon a current act. See 871 IAC 24.32(8).

The evidence in this matter establishes that Mr. Christie left work on the afternoon of June 30, 2011, under the mistaken belief that he was authorized to do so because he had started work one hour earlier and had worked through a break period. Mr. Christie had punched in and punched out of work and did not attempt to conceal his leaving from company management. The claimant had seen his immediate supervisor in a break area as he was leaving and believed that the supervisor was aware that he was leaving at that time and was aware that the claimant was leaving earlier because he had started work one hour earlier that morning.

The evidence in the record establishes that it was a common practice in the company's paint department for individuals who were required to start work early to be allowed to leave early after completing the specified number of working hours expected of employees in the department on each day in question. The claimant was aware of that policy and followed it, as had other employees in the department.

The administrative law judge concludes that it was not the claimant's intention to sever his relationship with the company by "walking off the job." The claimant had seen his supervisor and believed that the supervisor was aware that he was leaving work after completing the specified number of working hours that day and the claimant reasonably believed that his supervisor had no objection, as the supervisor did not voice any objection at the time. Immediately upon being informed that his leaving was not authorized, the claimant returned to work and completed the work shift. Although the employer believed the claimant had violated a new work rule requiring employees to use personal time if they left work even though they may have started work earlier that day, the claimant was not discharged from employment nor suspended at that time. The claimant was allowed to continue work until July 7, 2011, at which time he was suspended, and subsequently was officially discharged by letter on July 14, 2011.

Based upon the evidence in the record, the administrative law judge concludes that the claimant did not intentionally violate the company's new work rule but believed that he was following policy by punching out after working a requisite number of hours required for the shift on the day in question. The administrative law judge thus concludes that the claimant's conduct did not rise to the level of intentional disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits.

The administrative law judge also notes that there was a substantial delay in the claimant's discharge from employment even though the company's personnel department was aware on June 30, 2011, of the supervisor's allegations at the time that the claimant had left work early and without authorization. The claimant was allowed to continue working and the matter was not further investigated until approximately one week after the incident, and a final decision was not communicated to the claimant until two weeks later on July 14, 2011. As the claimant was allowed to continue working for a substantial period of time after the employer had notice of the alleged violation, the administrative law judge concludes that the claimant was not discharged for a current act of misconduct. Benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated August 8, 2011, reference 02, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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