

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JACEN R SKARIE**  
Claimant

**APPEAL NO. 12A-UI-14871-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ACE ELECTRIC INC**  
Employer

**OC: 11/04/12**  
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

Ace Electric, Inc. filed a timely appeal from a representative's decision dated December 5, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on January 23, 2013. The claimant participated. The employer participated by Mr. Jeff Hess, Project Estimator.

**ISSUE:**

The issue is whether the claimant was discharged for a current act of misconduct.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Jacen Skarie was employed by Ace Electric, Inc. from March 2009 until November 8, 2012 when he was discharged from employment. Mr. Skarie most recently was employed as a full-time project foreman and was paid by the hour. His immediate supervisor was Mr. Bob Schulte.

Mr. Skarie was discharged from his employment with Ace Electric, Inc. on November 8, 2012. At the time of discharge the claimant was provided a discharge document stating the claimant was discharged for "intimidation of fellow workers, coercing fellow employees to commit threatening job environment for fellow workers, sleeping on the job during business hours (per customer) customer complaints with customers refusing to have you back to one of their projects." Although Mr. Skarie questioned the employer about the basis for his termination, the employer supplied no dates of alleged incidents, no specific information about the incidents or any other information to Mr. Skarie at that time.

It appears that the decision to terminate Mr. Skarie was made because a company client was unwilling to have Mr. Skarie return to their job site alleging that the above-stated conduct had taken place sometime in the past at a previous work project.

Mr. Skarie was not warned or counseled about any unacceptable job performance as alleged by the employer at the time of discharge and the claimant denied any knowledge of the incidents alleged by the employer.

It is the employer's belief that the claimant should be disqualified from the receipt of unemployment insurance benefits because he had received a company handbook and knew or should have known that the conduct alleged to have occurred at a former job site was contrary to the company's policy and should result in disqualification for unemployment insurance benefits.

### **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 has the burden of proof in establishing job disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants the denial unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy but if it fails to meet its burden of proof to establish a current act of job-related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation.

In this matter the evidence in the record establishes that Mr. Skarie was discharged on November 8, 2012 for an incident or incidents that had taken place sometime in the past at an unidentified work location. Mr. Skarie denies any wrongdoing and the employer's witness was unable to provide any dates related to the alleged misconduct, any circumstances surrounding the alleged misconduct or the job site at which the alleged misconduct took place. In the absence of any evidence in the record to establish that the claimant willfully violated company policy by engaging in any of the alleged acts, the employer has not sustained its burden of proof in establishing job disqualifying misconduct. The employer also alleges conduct in the past that was not the subject of an inquiry or disciplinary action on the part of the employer and, therefore, is not a current act of misconduct at or near the time of the claimant's job separation on November 8, 2012.

For the reasons stated herein, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing a current act of intentional misconduct on the part of the claimant sufficient to result in the withholding of unemployment insurance benefits. Benefits are allowed, providing the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated December 5, 2012, reference 01, is affirmed. Claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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