

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**TERRY BOOE**  
Claimant

**APPEAL NO. 18A-UI-02407-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SIOUX CITY HEALTHCARE LLC**  
Employer

**OC: 01/21/18**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Terry Booe filed a timely appeal from the February 12, 2018, reference 01, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the Benefits Bureau deputy's conclusion that Mr. Booe was discharged on January 19, 2018 for conduct not in the best interest of the employer. After due notice was issued, a hearing was held on March 20, 2018. Mr. Booe participated and presented additional testimony through Mike Miller. 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: Terry Booe was employed by Sioux City Healthcare, L.L.C. as a full-time transportation driver until January 18, 2018, when the employer discharged him from the employment. Mr. Booe's duties involved transporting patients/residents to and from medical appointments. The employer suspended Mr. Booe on December 17, 2017 after an unnamed individual complained about Mr. Booe backing the 10-passenger van on a public street. The incident occurred while Mr. Booe was delivering a patient to a medical appointment. Mr. Booe drove past the driveway entrance to the medical facility and then safely backed the van 30 to 50 feet so that he could turn into the entrance to the facility. Prior to backing the van, Mr. Booe made certain that nothing was behind him and that he could back safely. Mr. Booe elected to back the van, rather than circle the block. On or about December 18, 2017, the employer notified Mr. Booe that he was discharged from the employment.

## 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). 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 evidence establishes a discharge for no disqualifying reason. The employer did not participate in the hearing and did not present any evidence to support the notion that Mr. Booe was discharged for misconduct. The evidence in the record establishes that Mr. Booe safely backed the employer's 10-passenger van a short distance on a public street so that he could deliver a patient to a medical appointment. Mr. Booe's conduct was reasonable. Even if the decision to back the van, rather than circle the block, had not been reasonable under the circumstances, the evidence would at worst establish a good faith error in judgment. Mr. Booe is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

**DECISION:**

The February 12, 2018, 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/rvs