

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRAVIS A MARTIN
Claimant

APPEAL NO. 17A-UI-09736-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL INCORPORATED
Employer

OC: 08/13/17
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 14, 2017, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on the claims deputy's conclusion that the claimant was discharged on August 15, 2017 for no disqualifying reason. After due notice was issued, a hearing was held on October 10, 2017. Claimant Travis Martin participated. Estelle Gudenkauf represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1, 3 and 4 into evidence. The administrative law judge took official notice of the fact-finding materials.

ISSUES:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Travis Martin was employed by Cargill Incorporated as a full-time Packaging Production Operator until August 15, 2017, when Clint Shriver, Packaging Supervisor, discharged him from the employment. Mr. Shriver was Mr. Martin's immediate supervisor. Mr. Martin's employment began in 2014 and Mr. Martin commenced his work in the packaging area in 2015. Mr. Martin was assigned to the overnight shift and worked from 11:00 p.m. to 7:00 a.m. As a packaging operator, Mr. Martin was assigned varying duties that included filling industrial bags and rail cars with food grade and industrial grade starch. The packaging area utilized industrial bags of varying sizes, from 50-pound bags to "super sacks" that could hold tons of product.

The final incident that triggered the discharge occurred during Mr. Martin's overnight shift that started August 7, 2017, when Mr. Martin erred by using the wrong super sack to fill a customer's order. Mr. Martin was training another employee during the shift. The order called for use of a super sack with dimensions of 41 inches by 48 inches by 50 inches. The packaging area had

three super sacks in that size. One of those sacks had white loops attached to it. Another of the sacks had green loops attached to it. The third sack was made of recycled gypsum. The customer order did not specify which bag to use. If the order did not specify which of the three sacks to use, the employer's general rule of thumb was to default to the white-looped bags. The green-looped bags had a longer spout, but Mr. Martin did not know this. When Mr. Martin went to the employer's warehouse to obtain super sacks for use in filling the customer order, he observed that the white-looped super sacks were in essence buried under about 200 green-looped bags. Mr. Martin thought it would take a substantial portion of his shift to dig out the white-looped bags. Because Mr. Martin was unaware of the longer spout on the green-looped bags, he did not think it would make any difference if he used the green-looped bags instead of the white-looped bags. Mr. Martin used the green-looped bags to fill the customer order. It took 100 to 300 bags to fill the order. When Mr. Martin arrived for work on August 15, Mr. Shriver notified Mr. Martin that he was being discharged from the employment for using the wrong super sack to fill the customer's order and for prior performance issues. At that time, Mr. Martin learned from Mr. Shriver the difference in the green-looped bag's spout and that the longer spout would get caught in the customer's machinery. The customer rejected the green-looped bags and Cargill had to refill the order. The green-looped bags that Mr. Martin used to fill the order can be sold to other customers, but those customers would likely need to cut the bags open to use the product, which would result in Cargill not being able to reuse the bags.

The next most recent incident that factored in the employer's decision to discharge Mr. Martin from the employment concerned a February 14, 2017 alleged failure on the part of Mr. Martin to secure a hatch on top of a rail car after filling the rail car with starch. Mr. Martin denies that he failed to secure the hatch. Mr. Martin's practice was to double-check all hatches to ensure he had properly closed them and secured them. Mr. Shriver brought the alleged error to Mr. Martin's attention on May 21, 2017, more than a month after Mr. Martin had filled the order. Mr. Shriver told Mr. Martin that the customer had discovered the unsecured hatch during the unloading process and that the unsecured hatch had resulted in starch being lost through the hatch during the unloading process. On March 21, 2017, Mr. Shriver issued a written reprimand to Mr. Martin. Upon the advice of the union representative present at the disciplinary meeting, Mr. Martin did not sign the reprimand.

The third and earliest performance concern that factored into the discharge occurred on Sunday, August 28, 2016, during a four-hour overtime shift tacked on to the end of Mr. Martin's regular shift. Mr. Martin was under the understanding that he was supposed to perform cleaning duties during the overtime shift, rather than production duties. Mr. Shriver expected Mr. Martin to perform production work during the overtime shift and was displeased when he learned Mr. Martin was not filling orders during the overtime shift. Mr. Martin was not well during the shift. Mr. Martin is a diabetic. During the overtime hours, Mr. Martin spent a substantial portion of the shift in the restroom. Mr. Martin asserts that he was not thinking clearly during the overtime shift and attributes his mental fog to his blood sugar level being significantly elevated during the overtime shift. When Mr. Shriver located Mr. Martin during the overtime hours to discern why he was not filling orders, Mr. Martin told Mr. Shriver that he had been cleaning. Mr. Martin overstated the cleaning duties he had performed and Mr. Shriver concluded that Mr. Martin was being dishonest. Mr. Martin denies that he was intentionally dishonest in his discussion with Mr. Shriver. On August 30, 2016, Mr. Shriver issued a written reprimand to Mr. Martin in connection with the August 28, 2016 incident. Upon the advice of a union representative present at the disciplinary meeting, Mr. Martin did not sign the reprimand.

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 weight of the evidence fails to establish a current act of misconduct in connection with the employment. The employer presented insufficient evidence, and insufficiently direct and satisfactory evidence, to establish carelessness, negligence or intentional and substantial disregard of the employer's interests in connection with any of the three incidents that factored in the discharge. The employer witness lacked personal knowledge of the final incident that triggered the discharge and of the two earlier incidents that factored in the discharge. The employer had the ability to present testimony through Mr. Shriver, but elected not to present such testimony. The weight of the evidence in the record establishes that Mr. Martin made a good faith error in judgment when he used the green-looped bags to fill the customer order on August 7, 2017. In the absence of clear instructions from the employer, Mr. Martin filled the order by the most efficient means available, absent knowledge that the green-looped bags had a longer spout and would not work for the customer. The employer presented insufficient evidence to establish otherwise. Because the evidence fails to establish carelessness, negligence or intentional misconduct in connection with the final incident, the administrative law judge need not further consider the earlier incidents that factored into the discharge. In any event, the employer presented insufficient evidence to prove carelessness, negligence or intentional misconduct in connection with those prior incidents.

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

DECISION:

The September 14, 2017, reference 01, decision is affirmed. The claimant was discharged on August 15, 2017 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/scn