

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

YAWO C ADZALO
Claimant

APPEAL NO. 17A-UI-10027-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RYDER INTEGRATED LOGISTICS INC
Employer

OC: 08/27/17
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 21, 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 29, 2017 for no disqualifying reason. After due notice was issued, a hearing was commenced on October 17, 2017 and concluded on November 2, 2017. Claimant Yawo Adzalo participated. Dena Shelton of Equifax represented the employer and presented testimony through Reginald Ward and Emily Rummells. French-English interpreters Jean-Bosco Franck and Serign Dhaim of CTS Language Link assisted with the hearing. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1 through 6 into evidence.

ISSUES:

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

Whether the discharge was based on a current act.

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: Yawo Adzalo was employed by Ryder Integrated Logistics, Inc. as a full-time material handler from February 2016 until August 29, 2017, when the employer discharged him from the employment. The final incident that triggered the discharge occurred on July 25, 2017 and came to a supervisor's attention on August 10, 2017. The incident in question concerned Mr. Adzalo deviating from the employer inventory receiving protocol to document receipt of a full pallet of material when the pallet was in fact one case short. The employer corrected the error on August 10, 2017. On August 11, 2017, a supervisor drafted a counseling notification document

concerning the incident. Mr. Adzalo's primary supervisor, John Corbett, presented the counseling notification to Mr. Adzalo on August 17, 2017 and instructed him not to make similar errors in the future. Absent from the counseling notification document was any indication that incident could or would result in discipline or discharge from the employment. When Mr. Corbett spoke to Mr. Adzalo on August 17, 2017, he said nothing to put Mr. Adzalo on notice that the receiving error could or would lead to Mr. Adzalo being discharged from the employment. Mr. Adzalo thereafter continued to perform his regular duties until August 29, 2017, when the employer summoned him to a meeting and discharged him from the employment. Between the July 25, 2017 final error that triggered the discharge and the August 29, 2017 meeting, the employer had said nothing to Mr. Adzalo to put him on notice that the particular incident could or would lead to discharge from the employment.

In making the decision to discharge Mr. Adzalo from the employment, the employer considered prior incidents similar to the final incident that triggered the discharge. On July 24, 2017, the employer had issued a final written counseling to Mr. Adzalo. The final written counseling notice warned that further unsatisfactory work performance issues may result in additional disciplinary action, up to and including termination of the employment. The error on July 25 and that came to the employer's attention on August 10 was one of two errors committed by Mr. Adzalo. The other July 25 error concerned Mr. Adzalo documenting an incorrect lot date and manufacture day in connection with receipt of inbound freight that Mr. Adzalo unloaded. A supervisor discovered that error on July 25, 2017 and drafted a Note to File or written warning that same day. Another supervisor presented the written warning to Mr. Adzalo on August 1, 2017. Mr. Adzalo thereafter continued in the employment for another 28 days.

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 in the record fails to establish a current act of misconduct. The final error that triggered the discharge occurred on July 25, 2017 and came to the employer's attention on August 10, 2017. The employer addressed the matter with Mr. Adzalo on August 17, 2017 without any reference to the possibility that the incident could or would lead to Mr. Adzalo being discharged from the employment. The employer then waited an additional 12 days before discharging Mr. Adzalo from the employment. Only then did the employer advise Mr. Adzalo that the error discovered on August 10 could, and would, result in discharge from the employment. The employer's 19-day delay, from the August 10 discovery of the final error and the August 29 notice to Mr. Adzalo that the error could and would trigger his discharge from the employment was unreasonable in length and caused the final error that triggered the discharge to no longer constitute a current act at the time of the discharge.

Because the discharge was not based on a current act, the administrative law judge concludes that Mr. Adzalo was discharged for no disqualifying reason. Because the discharge was not based on a current act, the administrative law judge need not consider whether the act involved misconduct and need not consider earlier incidents that factored in the discharge decision. Mr. Adzalo is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

DECISION:

The September 21, 2017, reference 01, decision is affirmed. The August 29, 2017 discharge was not based on a current act. 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