

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHRISTIAN K MAVUNDA
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL NO. 24A-UI-02245-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/28/24
Claimant: Respondent (1)**

Iowa Code Section 96.5(2)(a) & (d) – Discharge

STATEMENT OF THE CASE:

On February 26, 2024, the employer filed a timely appeal from the February 16, 2024 (reference 01) decision that allowed benefits to the claimant, provided the claimant met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on January 22, 2024 for no disqualifying reason. After due notice was issued, a hearing was held on March 21, 2024. Christian Mavunda (claimant) did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Audra Kuducovic represented the employer. The administrative law judge took official notice of the IWD record of benefits disbursed to the claimant (DBRO), which record reflects that no benefits have been paid in connection with the claim. Exhibits 3 and 4 were received into evidence. Exhibits 1 and 2 were not relevant and were not admitted.

ISSUES:

Whether the claimant was laid off, was discharged for misconduct in connection with the employment, or voluntarily quit without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Christian Mavunda (claimant) was employed by Tyson Fresh Meats, Inc. on a full-time basis from 2019 until January 22, 2024. The claimant's job title was "no jobber." During the last 10 or 11 months of the employment, the claimant was assigned to operate a forklift. The claimant's work hours throughout that time were 6:00 p.m. to 6:00 a.m. three days a week. The claimant would also be assigned to work a half shift one day a week. The claimant's supervisor during the last 10 to 11 months of the employment was Halida Smajlovic, Load-out Supervisor.

The employer alleges the claimant operated the forklift in an unsafe manner on January 22, 2024. The employer has in its possession recorded video surveillance of the alleged unsafe operation, but did not produce that evidence for the appeal hearing. On January 22, 2024 the

claimant drove his forklift toward a pallet of product. The claimant would need to drive his forklift toward pallets to perform his duties. There was a misunderstanding or disagreement regarding whether the pallet was ready to be transported by the claimant. A coworker stepped in front of the pallet. The claimant stopped short of the pallet. The employer does not know the speed at which the claimant was operating the forklift. Based on this alleged incident, the employer removed the claimant from his forklift operating duties. The employer wanted the claimant to accept a different work assignment. The new work assignment would be line production work on a different shift and for less pay. The new work hours would be 7:00 a.m. to 3:30 p.m. The new pay would be \$21.85 an hour, which represented the loss of the \$1.00 an hour shift differential the claimant received for working the overnight shift. When the claimant declined to accept the changed work assignment, the employer discharged the claimant from the employment for alleged insubordination. There was no other basis for the discharge.

The employer has written Rules of Conduct set forth in English. The Rules of Conduct lists infractions that may result in discharge from the employment. The list includes the following: Intentional destruction/misuse of Company or Team Member's property. The claimant is a non-English speaking person.

The claimant established a claim for benefits that was effective January 28, 2024 but has received no benefits in connection with the claim.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)(a) and (d) provides as follows:

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.

...

d. For the purposes of this subsection, "misconduct" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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. Misconduct by an individual includes but is not limited to all of the following:

...

(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

(3) Intentional damage of an employer's property.

...

(6) Conduct that substantially and unjustifiably endangers the personal safety of coworkers or the general public.

...

See also Iowa Admin. Code r. 871-24.32(1)(a) (duplicating the text of the statute).

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 Iowa Admin. Code r.871 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).

Continued failure to follow reasonable instructions constitutes misconduct. See *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employee’s failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer’s request in light of the circumstances, along with the worker’s reason for non-compliance. See *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985).

The employer presented insufficient evidence, and insufficiently direct and satisfactory evidence, to prove a discharge for misconduct in connection with the employment. The employer alleges unsafe operation of a forklift. The employer’s sole witness was not present for the alleged incident. The employer elected not to present testimony from the coworker who was present for the alleged incident or the supervisor who investigated the alleged incident. The employer states the employer has recorded video surveillance, but the employer did not make that evidence available for the administrative law judge’s consideration and has no explanation regarding why that evidence was not presented. The claimant would need to drive toward pallets in order to perform his work duties. The claimant would need to operate the forklift in the vicinity of other employees. The claimant did not collide with a pallet or with an individual. The claimant stopped short of a pallet. There is no indication the claimant was operating the forklift at an excessive speed. The weight of the evidence does not establish unsafe operation of the forklift. Nor does the evidence indicate an unreasonable refusal to follow a reasonable employer directive. The employer discharged the claimant when the claimant declined to accept substantial changes in the conditions of his employment that would have included a change in shift, an unfavorable change in duties, and reduction in pay. The claimant was not obligated to accept substantial changes in the conditions of the employment. See Iowa Admin. Code rule 87124.26(1) (regarding substantial changes in the contract of hire). The claimant was discharged for no disqualifying reason. Accordingly, the claimant is eligible for benefits, provided he is otherwise eligible. The employer’s account may be charged for benefits.

DECISION:

The February 16, 2024 (reference 01) decision is AFFIRMED. The claimant was discharged on January 22, 2024 for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

A handwritten signature in black ink that reads "James E. Timberland". The signature is written in a cursive, flowing style.

James E. Timberland
Administrative Law Judge

March 27, 2024
Decision Dated and Mailed

JET/jkb

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.