

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**FELIPE LEONARDO**  
Claimant

**APPEAL NO. 13A-UI-09495-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEST LIBERTY FOODS LLC**  
Employer

**OC: 07/21/13**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Felipe Leonardo filed a timely appeal from the August 2, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 23, 2013. Mr. Leonardo participated. Alejandra Rojas represented the employer. Spanish-English interpreter Ike Rocha assisted with the hearing.

**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: Felipe Leonardo was employed by West Liberty Foods as a full-time boxer from 2005 until June 28, 2013, when the employer discharged him for allegedly being under the influence of alcohol when he arrived for work on June 19, 2013. Mr. Leonardo's work hours were 4:00 p.m. to 12:30 a.m., Monday through Friday, and weekends as needed. The discharge was based on allegations by one or more supervisors that Mr. Leonardo had difficulty clocking in for work and getting ready for shift and that Mr. Leonardo smelled of alcohol. Mr. Leonardo has diabetes and heart disease takes medication for both. Mr. Leonardo had consumed alcohol on the evening of June 18, but had not consumed any alcohol on June 19, 2013. The employer lacks a policy regarding testing employees suspected of being under the influence of alcohol and did not ask Mr. Leonardo to submit to any testing. The employer suspended Mr. Leonardo on June 19, 2013 and later discharged him from the employment.

**REASONING AND CONCLUSIONS OF LAW:**

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.

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 employer had presented insufficient evidence and insufficiently direct and satisfactory evidence to establish that Mr. Leonardo was under the influence of alcohol on June 19, 2013. The employer provided no testimony from persons with firsthand knowledge of the alleged

conduct or from anyone actually involved in the disciplinary process. The employer had the ability to present such testimony and elected not. Mr. Leonardo had health issues that well account for irregular conduct. The employer has failed to present sufficient evidence to rebut the claimant's assertion that he had not been drinking on the day in question.

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

**DECISION:**

The agency representative's August 2, 2013, 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.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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