

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHAD J SNYDER
Claimant

APPEAL NO. 11A-UI-08470-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DIAL SILVERCREST CORP
Employer

OC: 05/22/11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated June 21, 2011, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on July 19, 2011. The claimant participated personally. Participating on behalf of the claimant was Mr. Al Sturgeon, attorney at law. The employer participated by Ms. Nicole Elermeier, executive director.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Chad Snyder was employed by Dial Silvercrest Corporation, doing business as Whispering Creek Manor, from June 17, 2010, until he was notified on June 1, 2011, that the employer had discharged him effective February 6, 2011, due to alleged falsification of a workers' compensation claim. Mr. Snyder held the position of part-time security/receptionist, averaging approximately 32 hours of work per week and was paid by the hour. His immediate supervisor was Mr. Terry Fiedler.

On January 26, 2011, Mr. Snyder reported that he had injured his left knee while placing trash in a dumpster that morning. The injury took place between 5:30 and 6:00 a.m. Mr. Snyder did not initially believe that he was injured, but subsequently the injury began to swell and the claimant reported such when his supervisor arrived at approximately 7:30 a.m. that day. The claimant worked until February 7, 2011, at which time it appears that he began to undergo treatment for the injury.

Subsequently, Mr. Snyder brought a suit against his employer, believing that he had not been paid for all hours worked. A decision in the claimant's favor was rendered by Small Claims Court on or about May 20, 2011. Approximately 11 days later, the claimant received a letter from the employer indicating that he had been discharged some months before on February 6, 2011 (See Exhibit 12).

It is the employer's belief that a video surveillance tape of the dumpster area does not show the claimant slipping or falling and the employer further believes that the tape does not show the claimant showing any sign of injury. Because of its belief that the security tape does not show an

injury and because the company's workers' compensation carrier declined Mr. Snyder's claim, the employer concluded that the claimant had falsified his injury report made back in February of 2011 and discharged the claimant.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is not.

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 the denial of unemployment insurance 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 App. 1992).

Allegations of misconduct 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 Department of Public Safety, 240 N.W.2d 682 (Iowa 1976).

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

In this matter, the claimant participated personally and provided sworn, firsthand testimony and testified with specificity as to the events that took place on the morning of January 26, 2011. The claimant testified that he slipped while taking trash to a dumpster and twisted his knee and that, subsequently, the swelling increased and that he reported the matter to his supervisor when the supervisor arrived approximately one to one and one-half hours later. The claimant filed a workers' compensation claim and was allowed to be off work for a substantial period of time by the employer while the claimant was apparently obtaining medical treatment for his injury. Subsequently, after filing suit against the employer for back wages, a decision was made on June 1, 2011, to discharge the claimant, apparently retroactively back to February 6, 2011 (See Exhibit 12).

The employer bases its decision to terminate the claimant on the employer's perception that a video surveillance tape did not show a slip or a fall nor show the claimant with an apparent injury. The video surveillance tape was not submitted in exhibits. The employer chose to rely on hearsay evidence to establish disqualifying misconduct. While hearsay is admissible in administrative proceedings, it cannot be accorded the same weight as sworn, direct testimony. The administrative law judge finds the claimant to be a credible witness and finds that his testimony is not inherently improbable. Although the administrative law judge makes no finding as to the employer's intentions, the timing of the claimant's discharge from employment seems, at the least, unusual.

For the above-stated reasons, the administrative law judge concludes that the employer has not sustained its burden of proof in showing intentional disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated June 21, 2011, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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