

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TAMMI A BARNES**

Claimant

**APPEAL NO. 10A-UI-04439-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL MEAT SOLUTIONS CORP**

Employer

**Original Claim: 02/21/10  
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 March 15, 2010, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 10, 2010. Claimant Tammi Barnes participated personally and was represented by attorney Philip Miller. Jessica Sheppard, Human Resources Associate, represented the employer. Exhibits Two through Six were received into evidence.

**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: Tammi Barnes was employed by Cargill Meat Solutions Corporation as a full-time production worker from October 2008 until February 19, 2010, when Sarah James, Assistant Human Resources Manager, discharged her from the employment for allegedly falsifying a pre-employment physical questionnaire. Ms. Barnes suffered injury to her upper arm and shoulder on February 11, 2010, when she fell in the workplace. Ms. Barnes was initially evaluated and treated by the company nurse, who applied ice and heat and returned Ms. Barnes to her regular duties. The next day, Ms. Barnes continued to have trouble with her shoulder and the nurse addressed the matter the same way. Shortly thereafter, Ms. Barnes was seen at an emergency room. The emergency room doctor restricted her from using her left arm. Ms. Barnes is right-handed. Ms. Barnes returned to work on light-duty. On February 18, 2010, the employer's contract workers' compensation doctor interviewed Ms. Barnes regarding any prior injury she might have suffered to her shoulder. Ms. Barnes mentioned a couple procedures she had undergone well before she started the employment and from which she had fully healed prior to starting the employment. Ms. Barnes had discussed these same procedures with the company nurse who interviewed her as part of her post-offer, pre-employment physical. The company doctor referred to the procedures Ms. Barnes described as thoracic outlet syndrome and a spinal fusion.

Sarah James, Assistant Human Resources Manager, reviewed Ms. Barnes' pre-employment physical questionnaire and did not see a reference to thoracic outlet syndrome or a spinal fusion. Ms. James noted that Ms. Barnes had answered no to the yes or no question on the questionnaire, "Have you had trouble with your back or neck?" Ms. Barnes' had answered the question thus because she not had trouble with her back or neck for years at the time she started the employment. Ms. Barnes had still shared information with the company nurse regarding her procedures and the company nurse made some cursory, cryptic reference to this discussion in the comments section of the questionnaire. Ms. James noted that Ms. Barnes had answered yes to the yes or no question regarding whether she had undergone previous surgery. Again, the nurse's notes in the comments section made cryptic reference to procedures Ms. Barnes discussed having undergone. Seeing no reference to thoracic outlet syndrome or spinal fusion on the pre-employment physical questionnaire, Ms. James telephoned the company nurse, Dee Hatland, and asked her whether she recalled Ms. Barnes disclosing such things. Ms. James was asking Ms. Hatland to remember off the top of her head an interview that had occurred approximately 16 months earlier. Ms. Hatland said she did not remember, but would have made reference in her notes to anything Ms. Barnes had discussed with her. Ms. James concluded—rather conveniently, in the context of the recent workplace injury—that Ms. Barnes had falsified her pre-employment physical. Ms. James notified Ms. Barnes that falsification of a work record subjected Ms. Barnes to termination under the employer's work rules and discharged Ms. Barnes from the employment.

Ms. Barnes' prior procedures and resolved health issues had in no way hindered Ms. Barnes from performing her assigned duties or placed Ms. Barnes or others at risk.

#### **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).

Iowa Administrative Code rule 871 IAC 24.32(6) provides as follows:

False work application. When a willfully and deliberately false statement is made on an Application for Work form, and this willful and deliberate falsification does or could result in endangering the health, safety or morals of the applicant or others, or result in exposing the employer to legal liabilities or penalties, or result in placing the employer in jeopardy, such falsification shall be an act of misconduct in connection with the employer.

The employer has failed to present sufficient evidence, and sufficiently direct and satisfactory evidence, to support the allegation that Ms. Barnes was discharged for misconduct in connection with the employment. The employer’s sole witness lacked any personal knowledge regarding the events that factored into the discharge. The employer had the ability to present testimony from Nurse Hatland, Dr. Clem, and/or Ms. James, but did not present such testimony. The evidence in the record fails to establish, by a preponderance of the evidence, that Ms. Barnes failed to appropriately disclose her health history at the start of the employment or that she intentionally withheld such information.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Barnes was discharged for no disqualifying reason. Accordingly, Ms. Barnes is eligible for benefits, provided she is otherwise eligible. The employer’s account may be charged for benefits paid to Ms. Barnes.

**DECISION:**

The Agency representative's March 15, 2010, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she 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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