

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HASSAN DAINKEH
Claimant

APPEAL NO. 17A-UI-07956-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BURKE MARKETING CORPORATION
Employer

OC: 07/09/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Hassan Dainkeh filed a timely appeal from the August 3, 2017, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on the claims deputy's conclusion that Mr. Dainkeh was discharged on July 10, 2017 for misconduct in connection with the employment based on the failure to provide proof of authorization to work in the United States. After due notice was issued, a hearing was held on August 23, 2017. Mr. Dainkeh participated. Shelli Seibert represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 17A-UI-07957-JTT. Exhibit 1 was received into evidence.

ISSUE:

Whether Mr. Dainkeh separated from the employment for a reason that disqualifies him for unemployment insurance benefits or that relieves the employer's account of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Hassan Dainkeh was employed by Burke Marketing Company as a full-time grind room laborer from October 3, 2016 until July 10, 2017, when the employer discharged him from the employment based solely on the expiration of his Work Authorization Card. Mr. Dainkeh is from Sierra Leona, is not a United States Citizen and is required by law to have a valid, current Employment Authorization Card in order to perform work in the United States. The employer is required by law to obtain proof that Mr. Dainkeh is authorized to perform work as a precondition to employing Mr. Dainkeh. On July 10, 2017, Mr. Dainkeh's most recent Work Authorization Card, which had gone into effect July 11, 2016, expired. Mr. Dainkeh knew at the time he obtained the Work Authorization Card that it was only good for a year and would expire on July 10, 2017.

On May 9, 2017, Mr. Dainkeh commenced an approved medical leave of absence in connection with one or more hernias. Before Mr. Dainkeh went off work, the employer reminded Mr. Dainkeh that his Work Authorization Card would expire on July 10, 2017 and that he would need to renew his Work Authorization Card to continue in the employment beyond July 10,

2017. On May 16 or 17, Mr. Dainkeh underwent two surgical procedures to address his hernia condition. Mr. Dainkeh remained in the hospital for two days and then was discharged to home for a recovery period. While Mr. Dainkeh remained off work, the employer provided Mr. Dainkeh with weekly short-term disability benefits to replace a portion of his wages. Mr. Dainkeh waited until the end of June 2017 to submit his application to renew his work authorization card. Though Mr. Dainkeh was off work on medical leave at that time, he was not incapacitated. In addition, Mr. Dainkeh had the assistance of his significant other. Mr. Dainkeh returned to his regular duties on July 5, 2017. The employer met with Mr. Dainkeh on July 10, 2017 to discharge him from the employment based on his failure to present a valid Work Authorization Card for the period beginning July 11, 2017.

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).

In *Altimaux v. Plumrose USA, Inc.*, Hearing Number 12B-UI-13394 (2013), the Employment Appeal Board considered the question of whether the claimant’s failure to take timely steps to renew an EAD constituted misconduct in connection with the employment. The Board reasoned as follows:

Given the claimant’s status as a non-U.S. citizen, it was incumbent upon him to maintain a current and valid work authorization card. Having gone through the process of obtaining an updated one for, at least, the past several years renders him culpable for having ‘dropped the ball’ in this instance. While, at first blush, it may seem like an isolated instance of poor judgment, we find his behavior blatantly negligent and disregarding of the employer’s interests. The claimant’s loss of employment was directly attributable to his failure to take care of an important personal and legal responsibility to himself and to the employer. This case can be likened to the claimant in *Cook v. Iowa Department of Job Service*, 299 N.W.2d 698 (Iowa 1980) wherein the claimant in *Cook* lost his insurability because of traffic tickets he accumulated. The court held that said loss was self-inflicted and disqualifying misconduct. So, too, does the Board hold that Mr. Altimaux’s loss of work status in the United States, and subsequent employment, was self-inflicted due to his failure to timely update his work authorization card.

Altimaux at pages 2-3.

Altimaux provides guidance for deciding the present matter. Mr. Dainkeh knew for a year that his Work Authorization Card would expire on July 10, 2017 and that he would be disqualified from working in the United States beyond that day if he did not take timely steps to renew his Work Authorization Card. Despite that knowledge, Mr. Dainkeh elected to wait until the end of June 2017 to apply to renew the Work Authorization Card. Mr. Dainkeh’s hernia surgery and recovery did not prevent him from taking reasonable and timely steps to renew the Work Authorization Card. Nor did a purported lack of funds prevent Mr. Dainkeh from taking timely steps to renew the card. Mr. Dainkeh’s disqualification from performing work in the United States was self-inflicted and constituted misconduct in connection with the employment. Accordingly, Mr. Dainkeh is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Dainkeh must meet all other eligibility requirements. The employer’s account shall not be charged for benefits.

DECISION:

The August 3, 2017, reference 01, decision is affirmed. The claimant was discharged on July 10, 2017 for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit allowance. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs