

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JIMMIE L MORRIS

Claimant

APPEAL NO. 14A-UI-01786-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 01/26/14

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Jimmie Morris filed a timely appeal from the February 12, 2014, reference 01, decision that disqualified him for benefits. After due notice was issued, a hearing was held on March 10, 2014. Mr. Morris participated. Maria Villalpando represented the employer and presented additional testimony through Rosa Izarraraz.

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: Jimmie Morris was employed on a full-time by Tyson Fresh Meats, Inc., from 2006 until January 25, 2014, when the employer discharged him from employment. Toward the end of the employment, Mr. Morris was a pump operator. During the last four months of the employment, Mr. Morris' immediate supervisor was Rosa Izarraraz. The final incident that triggered the discharge involved Mr. Morris being out of his assigned work area on January 21, 2014. Mr. Morris left his work area eight to ten minutes before his scheduled lunch break and did so to use the restroom. Mr. Morris returned from his lunch break four minutes late because he stopped to chat with a coworker. Earlier the same day, a supervisor believed that Mr. Morris was out of his work area, but Mr. Morris' was not yet due to begin his shift at that time. The employer believes there were other times when Mr. Morris was out of his work area at times he was supposed to be working. However, the employer is unable to say when those other times were.

In making the decision to discharge Mr. Morris from the employment, the employer also considered an incident on December 20, 2013, wherein Mr. Harmon forgot to document that a "combo" of meat had been processed. As part of his duties, Mr. Harmon was required to remove a sticker/label from the combo and place the label on a piece of paper. Mr. Harmon forgot to remove the label and place it on the piece of paper. Mr. Harmon later realized his

mistake and began to take steps to address it. However, Mr. Harmon's immediate supervisor had already taken steps to correct the error in documentation.

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 evidence in the record fails to establish misconduct in connection with the employment that would disqualify Mr. Harmon for unemployment insurance benefits. The employer presented sufficient evidence only to establish one instance of Mr. Harmon extending his lunch break by approximately 15 minutes. The employer presented insufficient evidence to establish any other work time/work area violations. The employer presented sufficient evidence to establish one instance of carelessness on December 20, 2013, but presented insufficient evidence to establish a pattern of carelessness or negligence.

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

DECISION:

The Claims Deputy's February 12, 2014, 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css