

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VICTOR ROBLEDO
Claimant

APPEAL NO. 130-UI-11912-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TPI IOWA LLC
Employer

OC: 02/01/09
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Victor Robledo filed a timely appeal from the July 12, 2013, reference 07, decision that denied benefits. After due notice was issued, a hearing was held on November 18, 2013. Mr. Robledo participated and presented additional testimony through Montie Lewis. Danielle Williams represented the employer. Exhibits One, Two and Three 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: Victor Robledo was employed by T.P.I, L.L.C., as a full-time production worker until June 12, 2013, when the employer discharged for allegedly fighting on the job. The employer had a written policy that prohibited fighting on the job and Mr. Robledo was aware of the policy.

The incident that triggered the discharge occurred on June 12, 2013. Mr. Robledo had limited space in which to perform his work and needed to move a cart into a work aisle momentarily in order to perform his duties. A maintenance employee, Rodney Long, came by and pushed the cart out of the aisle. Mr. Robledo approached Mr. Long and asked what was going on. Mr. Long told Mr. Robledo that the aisle needed to be kept open. Mr. Robledo told Mr. Long that it would only be a second and he would be able to move the cart out of the aisle. Mr. Robledo knew that the aisle needed to be kept clear aside from momentary necessary use of the aisle to perform work duties. Mr. Robledo did not have any physical contact with Mr. Long during the incident.

Later in the shift, Mr. Long and another maintenance worker who had been with Mr. Long alleged that Mr. Robledo had been aggressive towards Mr. Long and that Mr. Robledo had chest-bumped Mr. Long. Mr. Robledo had not been aggressive and had not chest-bumped Mr. Long. Montie Lewis, who was a shift leader was nearby and observed the incident.

Mr. Lewis observed that it was Mr. Long, not Mr. Robledo, who had acted in an aggressive manner. Mr. Lewis told this to Chad Cheek, Shift Manager, when Mr. Cheek asked Mr. Lewis about the incident. The employer nonetheless discharged Mr. Robledo 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).

An employee who engages in a physical altercation in the workplace, regardless of whether the employee struck the first blow, engages in misconduct where the employee's actions are not in self-defense or the employee failed to retreat from the physical altercation. See Savage v. Employment Appeal Board, 529 N.W.2d 640 (Iowa App. 1995).

The evidence in the record fails to establish misconduct on the part of Mr. Robledo. The employer failed to present testimony from any witnesses with personal knowledge of the incident that triggered the discharge. The employer had the ability to present evidence from persons with personal knowledge of the matter. Mr. Robledo's testimony that he was not aggressive or physical in connection with the incident was corroborated by the shift leader, Montie Lewis, who is still with the employer. The weight of the evidence indicates that Mr. Robledo did not engage in fighting in the workplace, aggressive conduct, or any other conduct that would constitute misconduct in connection with the employment.

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

DECISION:

The Agency representative's July 12, 2013, reference 07, 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/pjs