

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRAORE IDRISOU
Claimant

APPEAL NO. 15A-UI-03803-JT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOSAIC
Employer

OC: 02/22/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Traore Idrissou filed a timely appeal from the March 18, 2015, reference 02, decision that disqualified the claimant for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that the claimant had been discharged on November 26, 2014 for misconduct in connection with the employment. After due notice was issued, an in-person hearing was held on April 22, 2015. Mr. Idrissou participated personally and was represented by attorneys Amber Shanahan-Fricke and David Goldman. David Williams of Equifax represented the employer. Exhibits One through Five and A 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: The claimant is a non-citizen and is required to have a valid employment authorization document (EAD) to perform work in the United States. The EAD must be renewed annually. To avoid gaps in work authorization, the claimant must take timely steps prior to the expiration of the a current EAD to obtain a new EAD. The claimant has gone through the reauthorization process several times over several years. The claimant indicates that in his experience the renewal process usually takes one and a half to two months, though reason suggests, and the claimant's experience with the most recent reauthorization suggests, the process would likely take longer. In 2013, an immigration judge entered an order resolving the issue of the claimant's refugee status in favor of the claimant. The claimant had legal representation in that matter and a copy of the immigration judge's order had been provided to the claimant's immigration attorney at the time the refugee status was resolved.

The claimant was employed by Mosaic as a direct support associate from 2012 and last performed work for the employer on November 26, 2014. During the employment, the employer and the claimant were both aware that the claimant's November 27, 2013 employment authorization card would expire on November 26, 2014 and that the claimant could not legally

perform work for the employer beyond that date unless he had obtained a new EAD by that time. The claimant waited until October 25, 2014 to submit his application to renew his EAD. Before the claimant submitted his application, he needed to obtain from his immigration attorney a copy of the order adjudicating his refugee status. The claimant requested that document from his attorney on October 10, 2014. When the claimant had not provided proof of renewed employment authorization by November 25, 2014, the employer notified the claimant that he would be suspended effective November 26, 2014. The claimant was never allowed to return to the employment. When the claimant had not provided proof of reauthorization by January 6, 2015, the employer then attempted to recharacterize the separation that had occurred on November 26, 2014 as a voluntary quit effective January 6, 2015. On February 13, 2015, federal immigration authorities issued a new EAD to the claimant.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

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).

Iowa Administrative Code section 871 IAC 24.32(9) provides as follows:

Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by

the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

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).

The claimant had been through the reauthorization process several times before his EAD expired on November 26, 2014. The claimant was well aware that he could not perform work for the employer without a current and valid EAD. The claimant asserts that the reauthorization process would ordinarily take one and a half to two months. The claimant delayed filing his application for reauthorization until October 25, 2014. At that point, according to the claimant’s own assertion about how long the reauthorization process would take, the claimant knew that he would likely not have the new EAD by the time his current EAD expired on November 26, 2014.

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. Though the claimant cited a decision entered by Administrative Law Judge Steven Wise as persuasive authority for deciding the matter in favor of the claimant, the administrative law judge’s review of other decisions

addressing the issue, including other decisions entered by Judge Wise, have decided cases adversely to claimants where the claimant's delay in applying for reauthorization is a factor.

The weight of the evidence establishes that the claimant's failure to take timely steps to apply for reauthorization of his employment authorization document was in willful disregard of the employer's interests and constituted misconduct in connection with the employment. Accordingly, the claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits.

DECISION:

The March 18, 2015, reference 02, decision is affirmed. The claimant was discharged on November 26, 2014 for misconduct. 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, provided he meets 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/pjs