IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ERIC J BLUMER
Claimant

DEBNER PAINTING INC
Employer

APPEAL NO. 10A-UI-11010-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 06/27/10
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Eric Blumer filed a timely appeal from the August 5, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 21, 2010. Mr. Blumer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Alicia Perez, Merit Resources Senior Human Resources Assistant, represented the employer and presented testimony through Shannon Debner, Office and Shop Manager.

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: Eric Blumer was employed by Debner Painting as a full-time second shift supervisor from March 2009 until June 28, 2010, when Shannon Debner, Office and Shop Manager, discharged him from the employment. Ms. Debner was Mr. Blumer's immediate supervisor. Mr. Blumer's duties included finishing, staining, and sealing woodwork trim.

The final incident that triggered the discharge occurred on June 27, 2010 when Mr. Blumer shut an overhead door on a rack of woodwork trim thereby causing damage to the door frame. Earlier in the shift, Ms. Debner had noted the rack of trim in the doorway. Ms. Debner told Mr. Blumer to move the trim out of the doorway. Mr. Blumer had not moved the rack of trim out of the doorway before he attempted to shut the overhead door. Mr. Blumer called Ms. Debner's cell phone and left a message about the incident. Mr. Blumer indicated in the message that he thought the door would be okay for the evening. Ms. Debner did not review the message until the morning of June 28, 2010. Ms. Debner does not know whether or to what extent the overhead door was left open as a result of the damage to the frame.

The final incident followed a reprimand that Ms. Debner issued to Mr. Blumer on June 22, 2010. Ms. Debner cited a list of issues in the reprimand. Ms. Debner asserted in the reprimand that

Mr. Blumer had been taking 45 minute lunches and had been going to lunch at the same time as another second-shift employee. Ms. Debner expected Mr. Blumer to limit himself to 30 minute lunches when the shop was busy, but was okay with the longer lunches when the shop was not busy. The employer is unable to provide for the hearing the date or dates on which Mr. Blumer took the longer lunch. Ms. Debner also cited Mr. Blumer's failure to complete work orders during the June 21 shift. The employer does not recall what work orders were assigned to Mr. Blumer for that shift or what work orders he failed to complete.

Mark Debner, President, had issued a reprimand to Mr. Blumer on October 1, 2009 for allegedly drinking and smoking in the building. Ms. Debner does not know whether Mr. Blumer admitted or denied the allegation. Another employee had reported the alleged conduct to the employer. That employee is no longer with the employer.

The employer issued a reprimand to Mr. Blumer on January 13, 2010 after he missed a staff meeting due to oversleeping.

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 weight of the evidence establishes that Mr. Blumer was careless and negligent on June 27, 2010 when he failed to move a trim rack as directed and then closed an overhead door on the trim rack. The evidence indicates that Mr. Blumer was absent from work for personal reasons on January 13, 2010 due to oversleeping. The employer has failed to present sufficient evidence, and sufficiently direct and satisfactory evidence, to prove any other specific incidents of carelessness, negligence or intentional misconduct by a preponderance of the evidence. The employer elected to rely upon general allegations of misconduct rather than present meaningful proof to support the allegations of misconduct. The weight of the evidence does not establish a pattern of carelessness and/or negligent indicative of a willful or wanton disregard of the employer's interests. The single attendance matter for which the employer presented sufficient proof concerned an incident five months prior to the discharge.

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

DECISION:

The Agency representative's August 5, 2010, 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.

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James E. Timberland
Administrative Law Judge

_____
Decision Dated and Mailed

jet/pjs