

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACKIE C STONEHOCKER
Claimant

APPEAL NO. 07A-UI-06358-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VAC LAB EGGS INC/VALO-EIER GMBL
HY-VAC
Employer

OC: 06/03/07 R: 02
Claimant: Appellant (2)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct
871 IAC 24.32(8) – Current Act Requirement

STATEMENT OF THE CASE:

Jackie Stonehocker filed a timely appeal from the June 21, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 30, 2007. Mr. Stonehocker participated. Lynn Christensen, Farm Manager, represented the employer and presented additional testimony through Timothy Studyvin, Operations Manager. Exhibits One through Six were received into evidence.

ISSUE:

Whether the claimant was discharged for a “current act” of misconduct in connection with the employment that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jackie Stonehocker was employed by Hy-Vac Lab Eggs as a full-time caretaker/house manager from June 6, 2002 until June 4, 2007, when Farm Manager Lynn Christensen and Hatchery Manager Jason Burt discharged him. Mr. Stonehocker looked after one of the employer’s egg laying houses in which 4000-5000 chickens were housed. The final incident that prompted the discharge was the Service Evaluation Operations Manager Timothy Studyvin completed on May 24, 2006, when he went to Mr. Stonehocker’s assigned chicken house to perform repairs. At that time, Mr. Studyvin observed an excessive quantity of dead flies in the entry/shower/clothes changing area. Mr. Stonehocker had been regularly spraying the flies, but had not recently cleaned the dead flies from the premises. Mr. Studyvin reviewed this incident and prior evaluations and/or reprimands with Mr. Stonehocker’s immediate supervisor, Farm Manager Lynn Christensen, with the company president and with Hatchery Manager Jason Burt. This review took place on May 24 and the employer made the decision to discharge Mr. Stonehocker at the time of this review. However, the employer did not notify Mr. Stonehocker that the May 24 Service Evaluation provided a possible basis for his discharge until June 4, 2007, at which time Mr. Christensen and Mr. Burt discharged Mr. Stonehocker. Mr. Stonehocker had continued to report for work between May 24 and June 4.

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 a "current act" of misconduct. See 871 IAC 24.32(8). The evidence indicates that the final incident that prompted the discharge came to the employer's attention on May 24. The evidence indicates that the employer did not notify Mr. Stonehocker that the May 24 evaluation provided a possible basis for discharge until June 4, 11 days after the evaluation. The employer unreasonably delayed in notifying Mr. Stonehocker that he could face discharge as a result of the May 24, 2007 evaluation. The warnings the employer issued to Mr. Stonehocker prior to the final incident on May 24 do not satisfy the notice requirement set forth at 871 IAC 24.32(8) or in Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

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

DECISION:

The June 21, 2007, 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/pjs