

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEONARDO CRUZ

Claimant

APPEAL NO. 15A-UI-12215-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC

Employer

OC: 10/11/15

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Leonardo Cruz filed a timely appeal from the October 29, 2015, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that Mr. Cruz had been discharged for misconduct in connection with the employment. After due notice was issued, a hearing was held on November 18, 2015. Mr. Cruz participated personally and was represented by attorney Lorraine Gaynor. Kathy Truelson represented the employer and presented additional testimony through Chad Schnepfer. Spanish-English interpreter Hardy Rosario of CTS Language Link assisted with the hearing. Exhibits One and Two 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: Leonardo Cruz was employed by West Liberty Foods, L.L.C., as a full-time machine operator from 2011 until September 17, 2015, when the employer discharged him for erratic behavior and allegedly sexually harassing a female coworker. On September 14, 2015, the coworker reported the alleged sexual harassment to the employer. The alleged harassment consisted of Mr. Cruz greeting the coworker at the door, asking to assist the coworker with putting her work apron on, and following the coworker around despite the coworker's request that he cease doing so. The employer spoke to Mr. Cruz the same day. Mr. Cruz had not intended to make the coworker uncomfortable. Mr. Cruz apologized to the employer. The employer warned Mr. Cruz that further similar conduct could lead to discipline. On September 17, Mr. Cruz was absent from his work area for an extended period and was located in the female coworker's work area, dancing and singing. The employer met with Mr. Cruz and suspended him from the employment pending further investigation. During the meeting, Mr. Cruz engaged in the unusual behavior of writing strings of numbers on a note pad. On September 18, Mr. Cruz returned to the workplace with a teddy bear, a rose and a card. The employer intercepted Mr. Cruz at the entrance of the facility and met with Mr. Cruz regarding his intentions in returning to the plant while on

suspension. Mr. Cruz advised that he needed to deliver the items to a friend. During the meeting, Mr. Cruz again engaged in the unusual behavior of writing a string of numbers on a note pad. The employer directed Mr. Cruz to leave the plant. When Mr. Cruz dallied in the process of leaving, the employer summoned local law enforcement. The law enforcement officer stayed at the plant until Mr. Cruz left in his vehicle. On September 23, 2015, the employer notified Mr. Cruz that he was discharged from the employment.

At the time of all of the above incidents, Mr. Cruz was experiencing a psychotic break. On September 28, 2015, Mr. Cruz was hospitalized involuntarily to address serious mental impairment. The treating physician diagnosed Mr. Cruz as having had a psychotic break. Mr. Cruz remained hospitalized for about a week.

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).

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 establishes that all of the conduct that factored in the discharge was caused by serious mental illness, a psychotic break. Mr. Cruz was not in his right mind and any allegedly harassing or erratic behavior was outside his control. Because the conduct was not volitional, it did not involve a willful or wanton disregard of the employer’s interests. Mr. Cruz engaged in conduct during his meetings with the employer, and in the presence of the peace officer, that should have prompted others present to recognize that Mr. Cruz was mentally impaired and needed help. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Cruz was discharged for no disqualifying reason. Accordingly, Mr. Cruz is eligible for benefits, provided he is otherwise eligible. The employer’s account may be charged for benefits paid to Mr. Cruz.

DECISION:

The October 29, 2015, 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