

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

DAVID C PONCIN
Claimant

APPEAL NO. 18A-UI-07848-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AG PROCESSING INC A COOPERATIVE
Employer

OC: 06/17/18
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 13, 2018, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on the Benefits Bureau deputy's conclusion that the claimant was discharged on June 13, 2018 for no disqualifying reason. After due notice was issued, a hearing was held on August 14, 2018. Claimant David Poncin participated. Karen Stonebraker of Equifax represented the employer and presented additional testimony through Sandy Mason. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1, 2 and 4 through 6 into evidence. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

ISSUES:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: David Poncin was employed by Ag Processing, Inc., A Cooperative, from 2006 until June 13, 2018, when a management team in Omaha discharged him from the employment. Sandy Mason, Director of Labor Relations and Security, hand-delivered a discharge letter to Mr. Poncin on June 13, 2018. During the last several years of the employment, Mr. Poncin was the Elevator Manager for the employer's refinery and soy bean processing plant in Eagle Grove. Jeff Lampman, Operations Manager, was Mr. Poncin's immediate supervisor. Mr. Poncin supervised about two dozen employees.

The employer's decision to discharge Mr. Poncin from the employment was triggered by an incident on June 1, 2018. On that day, Jay Romp, a utility worker, went to Pat Russell, a manager at the Eagle Grove facility, to complain about Mr. Poncin and to tender his written

resignation. Mr. Romp's complaint and resignation immediately followed a disagreement between Mr. Poncin and Mr. Romp regarding the time and length of Mr. Romp's break and Mr. Romp going missing after Mr. Poncin assigned a task to him. Mr. Poncin believed Mr. Romp took an extended break to avoid performing the assigned task. Mr. Romp's complaint and resignation occurred in the context of Mr. Romp's impending transition to a rotating shift starting June 8, 2018 and the employer's anticipation that Mr. Romp might quit rather than go on the rotating shift. On June 1, Mr. Lampman, the Operations Manager, sent an email message to Sandy Mason, Director of Labor Relations and Security regarding information Mr. Lampman had received from Mr. Russell. That information indicated that Mr. Poncin accompanied Mr. Romp to Mr. Russell's office, that Mr. Poncin had yelled at Mr. Romp in a raised voice, "When I asked you when your break is, you said nine, now you say 8:30," and that Mr. Russell had told Mr. Poncin to stop yelling. The email message also included an assertion from Mr. Romp that Mr. Poncin engaged in favoritism in the workplace.

The discharge letter that Mr. Mason delivered to Mr. Poncin on June 13, 2018 stated, in relevant part, as follows:

You were employed by Ag Processing Inc – Eagle Grove, IA facility on July 28, 2006 and you currently hold the position of Elevator Superintendent.

There have been occasions in the past where Jeff Lampman has counseled you and documented your poor performance with team members. In each of these situations, you have not performed to the expectations the Company has for an Elevator Superintendent. The most significant gaps in your performance are as follows:

Your past comments to employees who wished to make a complaint could be deemed as reprisals against them and you were told this would not be tolerated further.

Your use of profane/obscene or otherwise objectionable language to team members in a threatening or abusive manner.

Your lack of leadership has created an environment where other employees complain of a hostile work environment which is unacceptable.

After reviewing these areas poor of performance [sic] the Company has determined you are not able to perform at the required level it needs of a [sic] Elevator Superintendent, therefore your employment with Ag Processing Inc is terminated effective June 13, 2018.

The employer's decision to discharge Mr. Poncin from the employment followed another subordinate employee's resignation and a discussion between Mr. Lampman and Mr. Poncin in January 2018. That employee, Angelo Montgomery, had complained about Mr. Poncin in connection with Mr. Montgomery's resignation notice. Mr. Poncin had granted Mr. Montgomery time off so that Mr. Montgomery could pursue his racing endeavors. However, the employment relationship took a turn for the worse when Mr. Poncin needed Mr. Montgomery to cover for another employee. During Mr. Lampman's January 2018 discussion with Mr. Poncin, he reminded Mr. Poncin that they had spoken at the time of Mr. Poncin's November 2017 review regarding the need to remain professional when communicating with subordinates and the fact that Mr. Poncin could come across as irritable and annoyed.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 Iowa Administrative Code rule 871-24.32(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 Iowa Administrative Code rule 871-24.32(4).

An employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. *Henecke v. Iowa Department of Job Service*, 533 N.W.2d 573 (Iowa App. 1995). Use of foul language can alone be a sufficient ground for a misconduct disqualification from unemployment benefits. *Warrell v. Iowa Dept. of Job Service*, 356 N.W.2d 587 (Iowa Ct. App. 1984). An isolated incident of vulgarity can constitute misconduct and warrant disqualification from unemployment benefits, if it serves to undermine a superior's authority. *Deever v. Hawkeye Window Cleaning, Inc.* 447 N.W.2d 418 (Iowa Ct. App. 1989). The question of whether the use of improper language in the workplace is misconduct is nearly always a fact question. It must be considered with other relevant factors, including the context in which it is said, and the general work environment. See *Myers v Employment Appeal Board*, 462 N.W.2d 734, 738 (Iowa Ct. App. 1990).

The weight of the evidence in the record establishes a discharge for no disqualifying reason. The employer presented insufficient evidence to prove, by a preponderance of the evidence, that Mr. Poncin acted with an intentional and substantial disregard of the employer's interests while interacting with Mr. Romp on June 1. The mere fact that Mr. Poncin raised his voice and that there was a dispute about a break is insufficient to establish misconduct in connection with the incident. The fact that a subordinate employee elected to leave the employment in the context of an impending substantial change in work hours and blamed the quit on Mr. Poncin is insufficient to establish misconduct on the part of Mr. Poncin. The prior concern does little to support the employer's assertions that Mr. Poncin's conduct or demeanor matched the allegations contained in the discharge letter. The employer presented insufficient evidence to rebut Mr. Poncin's characterization of the work matters. The administrative law judge notes that the employer elected not to present any testimony from people with personal knowledge of the matters that factored in the discharge. Mr. Poncin is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The July 13, 2018, reference 01, decision is affirmed. 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/rvs