

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALDO C D'EREDITA
Claimant

APPEAL NO. 15A-UI-11881-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAREER SYSTEMS DEVELOPMENT CORP
Employer

**OC: 09/27/15
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Aldo D'Eredita filed a timely appeal from the October 15, 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. D'Eredita had been discharged on September 29, 2015 for misconduct in connection with the employment. After due notice was issued, a hearing was held on November 12, 2015. Mr. D'Eredita participated. Pamela Drake of Employers Edge represented the employer and presented testimony through Vanessa Keltner and Shelby Behymer. Exhibits One Three, Five through Nine, A and B 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: Aldo D'Eredita was employed by Career Systems Development Corporation as a full-time security officer from March 2015 until September 29, 2015, when the employer discharged him for engaging in aggressive behavior directed at a Job Corp program participant. The employer operates a Job Corp program in Ottumwa. The program trains young adults, most of who are medicated for behavioral disorders, so that the trainees can obtain job skills and otherwise become better socialized and productive citizens. Mr. D'Eredita has a law enforcement and detention officer background. The employer's work rules prohibited "fighting, physical altercations, or disorderly conduct that violates common decency or morality, including abusive, vulgar, threatening, or obscene language." The work rules were contained in an employee handbook that Mr. D'Eredita received at the start of his employment. Mr. D'Eredita understood that his work duties included modeling appropriate behavior for trainees and de-escalating situations.

The conduct that triggered the discharge occurred on September 22, 2015. On that day, the employer asked Mr. D'Eredita to work a day shift for an absent employee. Mr. D'Eredita had finished his most recent shift at midnight the previous evening and agreed to work the day shift

despite having had insufficient sleep. During the course of the day shift Mr. D'Eredita assisted in addressing a number of behavioral issues involving Job Corp trainees. Mr. D'Eredita was responsible for ensuring that one participant, Devon Jones, remained in an unlocked isolation room. Off and on during the shift, Mr. Jones presented challenging verbal behavior through verbal exchanges with Mr. D'Eredita. During the afternoon, Mr. D'Eredita decided he had reached his limit with Mr. Jones and other trainees. When a female trainee continued to call Mr. D'Eredita "cuz" despite his directives to cease the behavior, Mr. D'Eredita stated to a coworker, "These kids need to learn some fucking respect." Later, Mr. D'Eredita decided he had enough of trainee Devon Jones' disrespectful speech. The situation had escalated when Mr. D'Eredita told trainee Jones to shut up. Jones challenged Mr. D'Eredita to make him shut up. Mr. D'Eredita removed his work shirt as he moved toward the isolation room in an aggressive manner. Mr. D'Eredita announced, "I shouldn't have to put up with this shit." Lead Security Officer Shelby Behymer was standing between Mr. D'Eredita and the isolation room. Ms. Behymer directed Mr. D'Eredita to leave the area, but Mr. D'Eredita did not comply. When Mr. D'Eredita continued to advance aggressively toward her, Ms. Behymer shoved Mr. D'Eredita backwards to stop him in his path. Ms. Behymer reasonably concluded that Mr. D'Eredita was out of control and was about to become physically violent with trainee Devon Jones. Mr. D'Eredita subsequently threw down his ID badge and stormed out after stating that he did not need to give two weeks' notice.

After the shift on September 22, 2015, the employer suspended Mr. D'Eredita. The employer further investigated the matter and interviewed Mr. D'Eredita as part of the investigation. Mr. D'Eredita admitted to some of the conduct and comments. Mr. D'Eredita could not provide a reasonable explanation regarding why he removed his work shirt as he headed toward the isolation room. At the conclusion of the investigation, the employer discharged Mr. D'Eredita.

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).

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 for 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).

Threats of violence in the workplace constitute misconduct that disqualifies a claimant for benefits. The employer need not wait until the employee acts upon the threat. See Henecke v. Iowa Dept. Of Job Services, 533 N.W.2d 573 (Iowa App. 1995).

The weight of the evidence establishes misconduct in connection with the employment. The administrative law judge found no reason to discount any portion of Ms. Behymer's testimony or written statement. The evidence establishes that Mr. D'Eredita violated the employer's work rules by electing to escalate multiple situations involving trainees on September 22. Mr. D'Eredita's misconduct included profane and offensive language directed toward trainees and otherwise uttered about trainee. Mr. D'Eredita's misconduct included aggression that

Ms. Behymer reasonably interpreted as a credible, imminent threat of violence directed at trainee. The conduct demonstrated a willful and wanton disregard of the employer's interests and violated the standards of conduct that the employer reasonably expected of Mr. D'Eredita.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. D'Eredita was discharged for misconduct. Accordingly, Mr. D'Eredita 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 October 15, 2015, reference 01, decision is affirmed. The claimant was discharged 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