

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

NICHOLAS C HOLST
Claimant

APPEAL NO. 19A-UI-01046-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ARAMARK
Employer

OC: 01/06/19
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Nicholas Holst filed a timely appeal from the February 7, 2019, reference 03, decision that held he was disqualified for benefits and the employer's account would not be charged for benefits, based on the deputy's conclusion that Mr. Holst was discharged on January 8, 2019 for misconduct in connection with the employment. After due notice was issued, a hearing was held on February 20, 2019. Mr. Holst participated. Brian Boss represented the employer.

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: Nicholas Holst was employed by Aramark as a full-time Route Sales Representative from November 26, 2018 until January 8, 2019, when the employer discharged him from the employment. The employer's decision to discharge Mr. Holst from the employment was based solely on Mr. Holst's inability to obtain a required United States Department of Transportation medical certificate card. Mr. Holst's inability to obtain the medical certificate card was based solely on his need to take, as needed, a particular prescription anxiety and depression medication. Mr. Holst had been on the medication for about a decade without incident. The doctor who prescribed the medication cleared Mr. Holst to perform the duties associated with the Aramark employment. On January 7, 2019, Mr. Holst received word that the physician who performed his D.O.T. physical for the Aramark employment would not issue a medical certificate card despite the documentation from Mr. Holst's physician that supported Mr. Holst's ability to perform his work duties. The employer ended the employment the next day.

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 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).

In *Cook v. Iowa Department of Job Service*, 299 N.W.2d 698 (Iowa 1980), the Iowa Supreme Court held that when a truck driver lost his insurability because of traffic tickets he accumulated, and thereby lost his ability to perform his driving duties, the loss was self-inflicted and constituted misconduct in connection with the employment. In *Cook*, the claimant's employment required that he be able to operate motor vehicles. Through commission of traffic offenses and resulting convictions, the claimant rendered himself incapable of continuing in the employment. In the present case...

The evidence in the record establishes a discharge for no disqualifying reason. Mr. Holst's inability to obtain the medical certificate was not volitional. Mr. Holst had no control over whether the medical certificate card was issued. Mr. Holst is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits.

DECISION:

The February 7, 2019, reference 03, decision is reversed. The claimant was discharged on January 8, 2019 for no disqualifying reason. The claimant is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs