

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON K MORRIS
Claimant

APPEAL NO. 11A-UI-12649-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

1ST CLASS SECURITY INC
Employer

**OC: 01/09/11
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 September 22, 2011, reference 04, decision that allowed benefits. After due notice was issued, a hearing was held on October 18, 2011. Claimant Jason Morris participated. Dave Braunger, Vice President, represented the employer.

ISSUE:

Whether the claimant separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jason Morris was employed by 1st Class Security, Inc., as a part-time loss prevention officer assigned to the Menard's Store in Ottumwa. Mr. Morris' immediate supervisor was Jason Becker, Director of Operations. Mr. Morris scheduled his own work hours to coordinate with the Menard's loss prevention needs. Mr. Morris last performed work for the employer on August 20, 2011.

On August 24, 2011, Mr. Morris contacted the Menard's Store Manager to notify him of changes he was making to his work schedule. Mr. Morris also mentioned to the Menard's store manager some issues he was having with receiving his paycheck from 1st Class Security. The store manager became belligerent and abusive. The store manager told Mr. Morris that his pay situation was not his "fucking problem" and that he did not care. When the store manager continued his tirade, Mr. Morris hung up the phone. Soon thereafter, Mr. Becker contacted Mr. Morris to tell him he was discharged from the employment.

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 employer failed to present testimony from anyone with personal knowledge of the events leading to Mr. Morris' separation from the employment or of the separation itself. The employer had the ability to present such testimony through Mr. Becker or from the Menard's store

manager. The weight of the evidence establishes that Mr. Becker discharged Mr. Morris from the employment in response to Mr. Morris' telephone call with the Menard's store manager. This included Mr. Morris hanging up on the verbally abuse store manager. That action was at worst a good faith error in judgment. While it would have been better to end the call more tactfully, Mr. Morris was not obligated to endure verbal abuse as a condition of the employment. The evidence fails to support the employer's assertion that Mr. Morris' separation was based on attendance. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Morris was discharged for no disqualifying reason. Accordingly, Mr. Morris is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Morris.

DECISION:

The Agency representative's September 22, 2011, reference 04, 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/css