

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFF M HIATT
Claimant

APPEAL NO. 13A-UI-13721-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

A Y M INC
Employer

**OC: 11/17/13
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Jeff Hiatt filed a timely appeal from the December 12, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on January 8, 2014. Mr. Hiatt participated and presented additional testimony through Andrew Webber. Marlene Dobraska represented the employer and presented additional testimony through Dave Schoenberger, Keith Davis and Josh Hollatz.

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: Jeff Hiatt was employed by A Y M, Inc., as a full-time machine operator from 2011 until November 19, 2013, when the employer discharged him from the employment for making unauthorized use of a supervisor's PIN to access a particular piece of restricted equipment in an equipment vending machine and for dishonesty.

The incident that triggered the discharge occurred on November 19, 2013. At the time of the incident, Mr. Hiatt needed multiple pieces of equipment to perform his work duties. Keith Davis, Second Shift Production Supervisor, was supervising Mr. Hiatt's work at the time. The employer utilizes an equipment vending machine. The employer uses the machine to track equipment use and to restrict access to certain pieces of equipment.

On November 19, while Mr. Hiatt was accessing the equipment vending machine to obtain equipment he was authorized to obtain from the machine, he also used the PIN of another supervisor, Josh Hollatz, without authorization to obtain a restricted piece of equipment. Mr. Davis came up behind Mr. Hiatt just as Mr. Hiatt was making unauthorized use of Mr. Hollatz's PIN. When Mr. Davis questioned Mr. Hiatt about accessing the vending machine to obtain the restricted piece of equipment, Mr. Hiatt did not provide a response. Mr. Hiatt's use of Mr. Hollatz's PIN to access to the machine was documented in the employer's computer

records and Mr. Davis immediately confirmed that Mr. Hiatt had just made use of the PIN to access the restricted piece of equipment. Mr. Davis notified Mr. Hollatz of the incident and the two decided to contact Dave Schoenberger, Plant Manager.

Mr. Schoenberger came to the plant and questioned Mr. Hiatt. Mr. Hiatt initially acted like he did not understand what Mr. Schoenberger was asking. Mr. Hiatt subsequently produced the restricted piece of equipment from his pocket. Mr. Schoenberger discharged Mr. Hiatt from the employment at that time. At no time did Mr. Hiatt suggest to the employer that he had Mr. Hollatz's permission to possess or use Mr. Hollatz's PIN. Mr. Hiatt knew it was a violation of the employer's work rules to possess or use someone else's PIN.

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 evidence in the record establishes that Mr. Hiatt knowingly and intentionally violated the employer's work rules by possessing and making unauthorized use of a supervisor's PIN to access restricted equipment. At all relevant times, Mr. Hiatt knew that such conduct violated the employer's policy concerning use of PINs. The evidence further indicates that Mr. Hiatt attempted to thwart the employer's investigation into the matter. The evidence does not support Mr. Hiatt's assertion that he had permission, actual or implied, to possess or use Mr. Hollatz's PIN on November 19, 2013.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Hiatt was discharged for misconduct. Accordingly, Mr. Hiatt 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 Agency representative's December 12, 2013, 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 will not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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