

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEFFREY W TODD**  
Claimant

**APPEAL NO. 10A-UI-12089-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TEMP ASSOCIATES**  
Employer

**OC: 08/18/10**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Jeffrey Todd filed a timely appeal from the August 18, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on October 13, 2010. Claimant participated. Becky Snyder represented the employer and presented additional testimony through Jan Windsor.

**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: The employer is a temporary employment agency. Jeffrey Todd last performed work for the employer in what was supposed to be a long-term assignment at Winegard in Burlington. The employment was full-time. Mr. Todd was assigned to operate a forklift to load and unload trucks and prepare product for shipping. Mr. Todd's immediate supervisor in the assignment was Dave Albert, Winegard Supervisor. The client business and the employer ended Mr. Todd's assignment on July 16, 2010.

The final incident that prompted Mr. Todd's discharge from the assignment occurred on July 12, 2010, when Mr. Todd mistakenly loaded some product in the wrong trailer. Mr. Todd had used a scanning device as required to determine whether the product needed to go, but somehow still the product got in the wrong trailer. In making the decision to discharge Mr. Todd from the assignment, the client business and the employer also considered a reprimand issued on July 6, 2010. That reprimand was issued after Mr. Todd assisted with loading two trucks that were later found to have shipped with incorrect product and without being properly secured.

The discharge from the assignment also ended Mr. Todd's employment with Temp Associates.

## 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 weight of the evidence establishes a discharge based on two incidents in which Mr. Todd made an error while performing his assigned duties. The evidence establishes at best some degree of carelessness on the part of Mr. Todd in connection with these two incidents. But these two incidents, absent evidence of additional similar incidents, do not establish a pattern of carelessness that would suggest willful or wanton disregard of the employer's interests. Accordingly, the evidence fails to establish misconduct in connection with the employment that would disqualify the claimant for unemployment insurance benefits. Mr. Todd is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Todd.

**DECISION:**

The Agency representative's August 18, 2010, reference 01, decision is reversed. 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.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs