

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

RICHARD L LANGFORD
Claimant

APPEAL NO. 19A-UI-00082-JT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN NATIONAL RED CROSS
Employer

OC: 12/02/18
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Richard Langford filed a timely appeal from the December 28, 2018, reference 01, 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. Langford was discharged on December 7, 2018 for conduct not in the best interest of the employer. Mr. Langford requested an in-person hearing. After due notice was issued, an in-person hearing was held on April 8, 2019 at the Waterloo IowaWORKS center. Mr. Langford participated in person. Charise Smith represented the employer and appeared by telephone. Exhibit 1 was 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: Richard Langford was employed by American National Red Cross from 2014 until December 7, 2018, when Charise Smith, Division Development Director, discharged him from the employment. From the start of the employment until November 14, 2018, Mr. Langford was a Donor Development Officer. As Donor Development Officer, Mr. Langford was responsible for "recapturing" non-current donors who had at some point in the past donated \$1,000.00 to \$2,500.00. Effective June 1, 2018, Mr. Langford commenced an approved leave of absence based on his need to undergo major surgeries and recover from those surgeries. At the time Mr. Langford went off work, he was on a performance improvement plan regarding his production metrics.

Mr. Langford returned from his approved leave of absence on November 14, 2018. By that time, the employer no longer had a Donor Development Officer position available. Mr. Langford accepted a similar position as Donor Relations Officer. In the new position, Mr. Langford was charged with maintaining as active contributors those donors who had recently donated \$1,000.00 to \$2,500.00. Effective November 14, 2018, Charise Smith, Division Development Director, became Mr. Langford's immediate supervisor. In connection with Mr. Langford's return

to the employment, the employer notified him that the previous performance improvement plan regarding his production metrics would remain in place. The new position brought with it an expectation that Mr. Langford would make a set number of calls to donors each day and would speak with a set number of donors each day.

The employer's decision to discharge Mr. Langford from the employment followed Ms. Smith's December 5, 2018 receipt of telephone company call records and her comparison of those records with the activity log Mr. Langford had created through the Salesforce software. The Salesforce log Mr. Langford generated indicated that Mr. Langford had made 281 telephone calls since his November 14, 2018 return to the employment. The telephone company report indicated 143 calls resulting in 133 conversations with donors. Ms. Smith requested that Mr. Langford provide records supporting his activity log. Mr. Langford had made the calls he reported on the log and had documented the calls in good faith. Mr. Langford believed there must be an error in the telephone company's documentation of the calls he had made. Mr. Langford contacted the telephone company, spoke to a telephone company representative, and was led to believe that some of the unanswered calls he had dialed and heard ringing at his end might not show up on the telephone company's report as completed calls. Mr. Langford reported this information to Ms. Smith. Ms. Smith then directed the employer's I.T. staff to follow up with the telephone company. The employer's I.T. reported back to Ms. Smith that the telephone company report was accurate. Following the report from the I.T. staff, Ms. Smith moved forward with discharging Mr. Langford from the employment for alleged fraudulent documentation.

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).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The weight of the evidence in the record establishes a discharge for no disqualifying reason. The weight of the evidence in the record fails to prove that the discrepancy in Mr. Langford's activity log and the telephone company report arose from fraudulent documentation on the part of Mr. Langford. Mr. Langford provided candid, credible testimony regarding his long-standing relationship with and dedication to American National Red Cross, his high regard for Ms. Smith, and his sincere belief that the telephone company report is inaccurate. The administrative law judge had the opportunity to sit across from Mr. Langford for the duration of the appeal hearing and to observe Mr. Langford's demeanor. Mr. Langford maintained appropriate eye contact, spoke with conviction, and in all regards conducted himself as a person of integrity. Based on Mr. Langford's testimony and observed demeanor, the administrative law judge found no reason to discount the credibility of Mr. Langford's testimony. On the other hand, the employer representative and sole witness elected to appear by telephone for the in-person hearing, elected not to present testimony from either the I.T. personnel who looked into the matter or the

telephone company that generated the report that triggered the discharge, and submitted no documentary evidence beyond the performance improvement plan. The employer has simply failed to present sufficient evidence to prove misconduct in connection with the employment. It would be a miscarriage of justice for the administrative law judge to shift the burden of proof from the employer to claimant in a manner similar to the employer's approach.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Langford was discharged for no disqualifying reason. Accordingly, Mr. Langford is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The December 28, 2018, reference 01, decision is reversed. The claimant was discharged on December 7, 2018 for no disqualifying reason. The claimant is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs