

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL D ALBRECHTSEN
Claimant

APPEAL NO. 15A-UI-03675-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLMAN DYNAMICS CORP
Employer

OC: 03/01/15
Claimant: Respondent (2)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct
Iowa Code Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 19, 2015, reference 02, decision that that allowed benefits to the claimant, provided he was otherwise eligible, and that held the employer's account could be charged for benefits; based on an Agency conclusion that the claimant had been discharged on March 4, 2015 for no disqualifying reason. After due notice was issued, a hearing was held on April 21, 2015. Claimant Michael Albrechtsen participated and presented additional testimony through James Hart. Christina Johnson represented the employer and presented additional testimony through Brian Wiegert. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits One through Seven and Nine into evidence.

ISSUES:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

Whether the claimant was overpaid benefits.

Whether the claimant is required to repay benefits.

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer manufactures metal castings for use in aerospace vehicles. Michael Albrechtsen was employed by Wellman Dynamics Corporation as a Fluorescent Penetrant Inspector (parts inspector) from 2004 until March 4, 2015; when the employer discharged him from the employment for falsifying parts inspection document to indicate parts had been pressure tested that had not been pressure tested. Jerry Warner was the claimant's immediate supervisor. Brian Wiegert was the area manager directly above Mr. Warner in the company hierarchy.

The final incident that triggered the discharge occurred on February 25, 2015. When Brian Wiegert arrived for work, he walked through the area where Mr. Albrechtsen appeared to have been pressure testing a part. Mr. Wiegert observed that Mr. Albrechtsen was lifting the metal casting from the water tank and that the metal casting did not have in it the custom plugs that would need to be in the part to perform the pressure test. Mr. Wiegert did not engage the claimant in conversation. Instead, Mr. Wiegert walked to his own work area and enlisted a couple witnesses, including Mr. Warner, and returned to the area where the claimant was working. Mr. Wiegert did not immediately engage Mr. Albrechtsen in conversation. Mr. Wiegert saw that the claimant had documented that he had pressure tested the casting Mr. Wiegert had observed earlier. Mr. Wiegert and the others observed that two metal and rubber plugs that would need to be used to pressure test that casting were dry and had not been used. Mr. Wiegert took photos of the plugs.

Several minutes later, Mr. Wiegert met with Mr. Albrechtsen, Mr. Warner, and a union representative. When Mr. Wiegert asked Mr. Albrechtsen how he had performed the pressure test without the plugs, Mr. Albrechtsen asserted that he had already performed the test and had just been dumping water out of the casting when Mr. Wiegert passed by. Mr. Wiegert was also concerned about Mr. Albrechtsen's alleged pressure testing of another part earlier that morning. In order to properly complete the pressure testing of that part, Mr. Albrechtsen would have needed the custom plug that had been sitting on Mr. Wiegert's desk at the time Mr. Albrechtsen allegedly pressure tested the second casting. When Mr. Wiegert asked how Mr. Albrechtsen did the pressure test without the plug that had been sitting on Mr. Wiegert's desk, Mr. Albrechtsen asserted that he had used another available plug. Mr. Wiegert had been under pressure to get that particular part to the shipping area that morning. The parties then left the conference room where they had been meeting and went to the pressure testing area. The union representative located a plug and asked Mr. Albrechtsen whether that was the plug he had used instead of the one sitting on Mr. Wiegert's desk. Mr. Albrechtsen indicated it was the plug he had used. The plug in question was substantially smaller than the appropriate custom plug and would not have been any use in pressure testing the casting in question. Mr. Wiegert had noted that Mr. Albrechtsen had documented that he had properly pressure tested the casting that would have required the plug sitting on Mr. Wiegert's desk. After meeting with Mr. Albrechtsen, Mr. Wiegert suspended Mr. Albrechtsen pending the completing of the employer's investigation of the incident. On March 4, the employer notified Mr. Wiegert that he was discharged from the employment.

Mr. Albrechtsen established a claim for benefits that was effective March 1, 2015. Mr. Albrechtsen received \$5652 in benefits for the 12-week period of March 1, 2015 through May 23, 2015.

The employer participated in the fact-finding interview through Christina Johnson, Human Resources Assistant. Ms. Johnson provided an oral statement to the Claims Deputy. The employer also provided several pages of detailed documentation of the matters that factored in the discharge.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

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). 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 in the record establishes that Mr. Albrechtsen knowingly and intentionally failed to perform essential quality control duties when he knowingly and intentionally failed to pressure test two metal castings on February 25, 2015. Mr. Albrechtsen sought to create the appearance that he was performing the pressure tests without actually performing the tests. Mr. Albrechtsen knowing and intentionally falsified documentation to indicate that he had pressure tested both parts. Mr. Albrechtsen had been in the employment several years and was fully aware that his conduct was contrary to the employer's interests in producing safe and reliable parts for use in the aerospace vehicles.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Albrechtsen was discharged for misconduct. Accordingly, Mr. Albrechtsen 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 unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later deemed ineligible benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid \$5652 in benefits for the 12-week period of March 1, 2015 through May 23, 2015. Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment. The employer's account will be relieved of liability for benefits, including liability for benefits already paid.

DECISION:

The March 19, 2015, reference 02, decision is reversed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The claimant was overpaid \$5652 in benefits for the 12-week period of March 1, 2015 through May 23, 2015. The claimant is required to repay the overpayment. The employer's account will be relieved of liability for benefits, including liability for benefits already paid.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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