

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

NATHANIEL J FOREST
Claimant

APPEAL NO. 18A-UI-01938-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTRO INC
Employer

OC: 01/14/18
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Nathaniel Forest filed a timely appeal from the February 2, 2018, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on the Benefits Bureau deputy's conclusion that Mr. Forest was discharged on December 28, 2017 for violation of a known company rule. After due notice was issued, a hearing was held on March 8, 2018. Mr. Forest participated personally and was represented by attorney Charles Pierce. Tracy Barre represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 18A-UI-01939-JTT. Exhibits A through F were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO (database readout) and KCCO (continued claims).

ISSUE:

Whether Mr. Forest separated from the Centro 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: Centro, Inc. is a manufacturer with a plant in North Liberty. Nathaniel Forest was employed by Centro as a full-time Product Inspector Finisher from March 2017 until December 28, 2017, when the employer discharged him from the employment. Mr. Forest's work hours were 11:00 p.m. to 7:00 a.m., Sunday evening through Friday morning. Brett Elliott, Business Process Support, was Mr. Forest's immediate supervisor. In October 2017, Mr. Forest spoke to Ms. Barre about his need to undergo shoulder reconstructive surgery on his left shoulder. Mr. Forest had a non-work related left rotator cuff injury that predated the employment. Mr. Forest is right-handed. Mr. Forest told Ms. Barre that his recovery from the procedure was expected to take two to three months, during which time he would be unable to work. During that discussion in October 2017, Mr. Forest and Ms. Barre agreed that it would be best for Mr. Forest to wait to undergo the shoulder reconstruction procedure until after he had been with Centro for a year so that he could qualify for a leave of absence under the Family and Medical Leave Act (FMLA) and preserve his employment during the extended leave. A few days after that discussion, Mr. Forest notified Ms. Barre that his surgeon had set the procedure for a date in April 2018.

After the discussions in October 2017, Mr. Forest continued to have non-work related problems with his left shoulder with increasing frequency. After an episode that occurred away from work around the Thanksgiving Holiday, and which prompted Mr. Forest to be absent on several work days, Mr. Forest and his surgeon determined it was necessary to move Mr. Forest's surgery to an earlier date. During the first week of December 2017, Mr. Forest notified Ms. Barre that his surgeon had reset the procedure for December 29, 2017 and that he would need to be off work for eight to 10 weeks while he recovered from the procedure. After that discussion, and because Mr. Forest was not yet eligible for FMLA, Ms. Barre conferred with Rhonda Griffin, Direct of Human Resources, and Phil Hingst, General Manager. Ms. Griffin and Mr. Hingst decided that the employer would be unable to hold Mr. Forest's position for him due to business needs.

On the morning of December 28, 2017, Ms. Barre met with Mr. Forest and notified him that the employer was terminating his employment at that time. Mr. Forest expressed a desire to report for the shift that started that evening, but Ms. Barre decided that was ill-advised in light of the surgery set for the next day and did not allow Mr. Forest to report for the shift. At the time, Ms. Barre told Mr. Forest that Centro was ending his employment, Ms. Barre was under the erroneous belief that Mr. Forest would be eligible for short-term disability benefits through the employer's third-party short-term disability provider, Cigna.

REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113) provides as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See Iowa Administrative Code rule 871-24.25.

The parties have each characterized the separation as a discharge. While the parties' characterization of the separation is not determinative, the weight of the evidence supports the conclusion that the separation was indeed a discharge. Mr. Forest expressed intent to continue in the employment if allowed to do so and did not express an intention to voluntarily separate from the employment. The employer elected to end the employment on the morning December 28, 2017, despite Mr. Forest's request to report for his shift on that evening.

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). 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 a discharge that was not based on misconduct in connection with the employment. Accordingly, Mr. Forest is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

DECISION:

The February 2, 2018, reference 01, decision is reversed. The claimant was discharged on December 28, 2017 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/rvs