

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALLEN L SIMPSON**  
Claimant

**APPEAL NO. 12A-UI-02360-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PER MAR SECURITY & RESEARCH CORP**  
Employer

**OC: 01/22/12**  
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the February 27, 2012, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on March 26, 2012. Mr. Simpson participated. Shauna Schroeder represented the employer and presented testimony through Maryjo Draman. Exhibits One through Four were 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: Allen Simpson was employed by Per Mar Security & Research Corporation as a full-time site supervisor until January 24, 2011, when Field Supervisor Maryjo Draman and Human Resources Director Shauna Schroeder discharged him from the employment. Mr. Simpson had started with the company in 2008 and was site supervisor at Boehringer Ingelheim Vetmedica during most of his employment. Ms. Schroeder was Mr. Simpson's immediate supervisor. Mr. Simpson performed his security duties in a security check area at the front of the Boehringer Ingelheim building. The area consisted of a security desk, a waiting area, and a back room. Various keys to the facility and equipment were to be kept in a lockbox on the wall in the back room. The lockbox itself was never locked, but the key to the lockbox was always with the box.

Mr. Simpson's employment came to an end when Bob Lynch, head director of security Boehringer Ingelheim Vetmedica, told Ms. Draman at a January 23, 2012 meeting that he wanted Mr. Simpson removed from the post. Mr. Lynch cited two reasons for the removal. The first was that Mr. Simpson was in the habit of keeping some of the facility and equipment keys in the front desk area, rather than keeping them in the lockbox in the back room. The lockbox was approximately 10 steps from the security desk. For months, Mr. Simpson kept the keys in the front desk area to save himself the trip to the lockbox and to expedite serving the several people who might be waiting in line at the security desk. Mr. Simpson kept the keys where they could not be seen by others. Established security protocol called for the keys to be "secured." When

a Boehringer Ingelheim Vetmedica security representative trained Mr. Simpson, he addressed key accountability and modeled proper security protocol by returning all keys to lockbox in the back room. While Mr. Lynch had been aware for months of Mr. Simpson's habit of keeping certain keys at the front desk, Per Mar Security only learned of the practice on January 23, 2012. Mr. Lynch had not previously said anything to Mr. Simpson about the keys issue.

The second issue cited by Mr. Lynch as a basis for the request to remove Mr. Simpson was Mr. Simpson's act of disabling of an equipment alarm. The incident dated from nine to ten months prior to Mr. Simpson's discharge. Boehringer Ingelheim Vetmedica had had the alarm installed because equipment failures were not being properly addressed. Mr. Simpson believed the alarm to be redundant and was annoyed by the frequency of the alarm. Mr. Simpson placed a box over the laser eye of the alarm so that it would not detect the movement that would sound the alarm.

In making the decision to discharge Mr. Simpson from the employment, the employer considered a written reprimand Ms. Draman had issued to Mr. Simpson in October 2011 after receiving complaints regarding Mr. Simpson's hygiene. Mr. Simpson agreed at that time to better attend to his hygiene. In addition, the security desk chair was replaced.

#### **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 indicates negligence on the part of Mr. Simpson with regard to his handling of keys at Boehringer Ingelheim Vetmedica. The weight of the evidence indicates that Mr. Simpson knew that the keys were to be kept in the lockbox when not properly checked out, but that Mr. Simpson decided to create his own practice rather than following the established protocol. Mr. Simpson had both good reasons and bad reasons for the practice, expediting service and saving himself steps. Mr. Simpson has provided an explanation regarding the key handling issue that somewhat mitigates that conduct. The keys in question were frequently requested. The keys were kept out of sight. Keeping the keys nearby expedited service. Mr. Lynch was aware of the practice for months without mentioning it to Per Mar until January 23, 2012, despite having had regular meetings with Per Mar. The incident concerning the intentional disabling of the equipment alarm appears more egregious, but that matter dates from nine to ten months prior to the discharge. The weight of the evidence fails to establish misconduct in connection with the hygiene issue.

While the evidence demonstrates some misconduct on the part of Mr. Simpson, the mitigating circumstances attending final conduct that triggered the discharge, the keys issue, lead the administrative law judge to conclude that Mr. Simpson's conduct did not rise to the level of substantial misconduct indicating a willful or wanton disregard of the employer's interests.

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

**DECISION:**

The Agency representative's February 27, 2012, reference 01, decision is affirmed. 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

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