

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSE T ESCHEN

Claimant

APPEAL NO. 17A-UI-05270-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EMERALD GREEN LAWNCARE INC

Employer

OC: 01/01/17

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Jesse Eschen filed a timely appeal from the May 17, 2017, reference 03, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on the claims deputy's conclusion that Mr. Eschen had been discharged on April 22, 2017 for failure to follow instructions in the performance of his job. After due notice was issued, a hearing was held on June 6, 2017. Ms. Eschen participated and presented additional testimony through Jesse Greene. The employer did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate in the hearing.

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: Jesse Eschen was employed by Emerald Green Lawn Care, Inc., as a full-time mower from May 2016 until April 22, 2017, when Jeff Pickel, the business owner, discharged him from the employment. Mr. Eschen's work hours were 8:00 a.m. to 5:00 or 6:00 p.m., Monday through Friday. Mr. Eschen's immediate supervisor was Cody Wood, Crew Lead. On the morning of Saturday, April 22, 2017, Mr. Pickel notified Mr. Eschen that he was discharging him from the employment. Mr. Pickel asserted in the text message that Mr. Eschen had "screamed" at a customer, that Mr. Eschen "did stuff," and that Mr. Eschen's mowing was substandard. Mr. Eschen had not screamed at a customer. Mr. Eschen performed his mowing duties in good faith and to the best of his ability.

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 employer did not participate in the appeal hearing and did not present any evidence to meet the employer's burden of proving, by a preponderance of the evidence, that Mr. Eschen was discharged for misconduct in connection with the employment. The employer presented no evidence to support the allegations the employer included in the text message that discharged Mr. Eschen from the employment. The evidence in the record establishes that Mr. Eschen did not speak inappropriately to a customer and that he performed his duties in good faith and to the best of his ability.

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

DECISION:

The May 17, 2017, reference 03, decision is reversed. The claimant was discharged on April 22, 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