

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CLAYTON M NIEWOEHNER
Claimant

VAN METER INDUSTRIAL INC
Employer

APPEAL NO. 23A-UI-06291-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/28/23
Claimant: Respondent (1)**

Iowa Code Section 96.5(2)(a) & (d) – Discharge

STATEMENT OF THE CASE:

On June 20, 2023, the employer filed a timely appeal from the June 15, 2023 (reference 01) decision that allowed benefits to the claimant, provided the claimant met all other eligibility requirements, and that held the employer's account could be charged for benefits. The deputy had concluded the claimant was discharged on May 30, 2023 for performing work unsatisfactory to the employer but not for misconduct in connection with the employment. After due notice was issued, a hearing was held on July 12, 2023. Stephanie Aberle represented the employer and presented additional testimony through Amber Teixeira. Clayton Niewoehner (claimant) did not appear, did not comply with the hearing notice instructions to call the designated toll-free number at the time of the employment, and submitted an unsworn written statement in lieu of appearing for the hearing. The claimant did not request a postponement of the appeal hearing and elected not to respond to the administrative law judge's inquiry to determine whether there was a good cause basis for postponement. Exhibit 1 through 6 and A were received into evidence. The administrative law judge took official notice of Iowa Workforce Development's record of benefits disbursed to the claimant (DBRO). The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

ISSUE\:

Whether the claimant was discharged for misconduct in connection with the employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Clayton Niewoehner (claimant) was employed by Van Meter Industrial, Inc. as a full-time, salaried Product Line Specialist from 2019 until May 30, 2023, when the employer discharged him from the employment. Van Meter Industrial is a full-service electrical components distributor. The claimant's position was focused on training customers so as to enable customers to successfully use products purchased from Van Meter Industrial. The claimant was

charged with collaborating with Van Meter Industrial colleagues and external vendors to that end. Stephanie Aberle, Customer Support Manager, was the claimant's supervisor.

The employer's decision to discharge the claimant from the employment was triggered by two customer concerns that came to the employer's attention within the last two weeks of the employment.

On or about May 18, 2023, the employer learned there has been a three-month break in communication between the claimant and a particular client, Prairie Farms Dubuque, regarding that client's attempt to secure Dubuque-area training for its employees. An earlier email discussion between the claimant and the client had ended on February 10, 2023. On May 17, 2023, the client sent an email message asking, "Can anyone help us?" The claimant responded that same day via email. At that time, the claimant stated he had understood in February that the client was going to start sending employees to training opportunities pursuant to a list the claimant had provided. Though the client continued in the May correspondence to express interest in training in the Dubuque, the claimant provided a list of training opportunities at other locations, including Muscatine, Davenport, Cedar Rapids, Waterloo, and Rochester. A reasonable person would conclude that if similar opportunities had been available in the Dubuque area, the claimant would have included those opportunities in the list he provided to the customer. The client was dissatisfied with the absence of training opportunities in the Dubuque area.

On May 23, 2023, the employer received a report from an internal source that the claimant had responded to another client's request for service and assistance with starting up an automated drive system by steering the client toward training opportunities. The employer deemed the claimant's response unresponsive to the client's needs.

On February 23, 2023, the claimant had acknowledged receipt of the employer's 2023 Guidebook. The Guidebook included various employer policies and a lengthy aspirational mission statement the employer termed "The Anatomy of an Employee-Owner." The statement included expectations that employees "Be ALL-IN and fully engaged" and that employees "Go above and beyond" to "Ensure customers have everything they need to succeed."

In August 2022 and March 2023, the employer issued lengthy written warnings to the claimant that offered general guidance while setting forth an exhaustive criticism of the claimant's approach to the employment and to employment relationships. One cannot discern from the documents the specific incidents or events the employer was responding to in the documents. Nor is the employer able to speak at present to specific incidents or events that triggered the written warnings. The documents suggest the employer was dissatisfied with just about every aspect of the claimant's approach to his work duties despite maintaining the employment over the course of several years.

When the employer discharged the claimant from the employment, the employer set forth its final concerns as follows:

During the week of May 22nd, 2023, two separate examples of your lack of communication with customers and necessary industrial team members was brought to my attention. On two separate occasions you did not go above and beyond to provide a service to our customers.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)(a) and (d) provides as follows:

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.

...

d. For the purposes of this subsection, "misconduct" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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. Misconduct by an individual includes but is not limited to all of the following:

- (1) Material falsification of the individual's employment application.
- (2) Knowing violation of a reasonable and uniformly enforced rule of an employer.
- (3) Intentional damage of an employer's property.
- (4) Consumption of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in a manner not directed by the manufacturer, or a combination of such substances, on the employer's premises in violation of the employer's employment policies.
- (5) Reporting to work under the influence of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in an off-label manner, or a combination of such substances, on the employer's premises in violation of the employer's employment policies, unless the individual is compelled to work by the employer outside of scheduled or on-call working hours.
- (6) Conduct that substantially and unjustifiably endangers the personal safety of coworkers or the general public.
- (7) Incarceration for an act for which one could reasonably expect to be incarcerated that results in missing work.
- (8) Incarceration as a result of a misdemeanor or felony conviction by a court of competent jurisdiction.
- (9) Excessive unexcused tardiness or absenteeism.
- (10) Falsification of any work-related report, task, or job that could expose the employer or coworkers to legal liability or sanction for violation of health or safety laws.
- (11) Failure to maintain any license, registration, or certification that is reasonably required by the employer or by law, or that is a functional requirement to perform the individual's regular job duties, unless the failure is not within the control of the individual.
- (12) Conduct that is libelous or slanderous toward an employer or an employee of the employer if such conduct is not protected under state or federal law.
- (13) Theft of an employer or coworker's funds or property.

(14) Intentional misrepresentation of time worked or work carried out that results in the individual receiving unearned wages or unearned benefits.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

- a. For the purposes of this rule, “misconduct” is defined as a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee’s contract of employment. Misconduct is 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 a 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. Misconduct by an individual includes but is not limited to all of the following:

The Administrative Code rule goes on to list the same forms of misconduct listed in 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 Iowa Admin. Code r.871 -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).

The evidence in the record establishes a May 30, 2023 discharge for no disqualifying reason. The weight of the evidence indicates the claimant performed his work duties in good faith and to the level of his ability, but not to the satisfaction of the employer. The employer presented insufficient evidence to prove that the claimant’s understanding of where matters stood with Prairie Farms Dubuque as of the February 10, 2023 pause in communication was unreasonable or that the gap in communication was the result of carelessness and/or negligence on the part of the claimant. When the customer reinitiated contact in May 2023, the claimant promptly responding with a list of training opportunities, albeit not in the Dubuque area. A reasonable person would conclude that if similar opportunities had been available in the Dubuque area, the claimant would have included those opportunities in the list he provided to the customer. The

employer provided even less information regarding the claimant's alleged mishandling of the May request for assistance with the drive start-up. The employer asserts the claimant's mishandling of the matter came to the employer's attention through other staff. The employer presented no evidence of communication between that client and the claimant. The available evidence indicates the claimant was willing to facilitate services within his sphere of responsibilities. The evidence establishes no deliberate act or omission by the claimant evincing willful or wanton disregard of the employer's interests, nor any pattern of carelessness and/or carelessness indicating such disregard. The claimant's apparent ongoing inability to perform to the employer's many and high expectations was not in this instance misconduct in connection with the employer. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The June 15, 2023 (reference 01) decision is AFFIRMED. The claimant was discharged on May 30, 2023 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

July 20, 2023
Decision Dated and Mailed

r/s

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.