

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN E CAMPBELL
Claimant

APPEAL NO. 16A-UI-12039-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMPC INC
Employer

OC: 09/25/16
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

John Campbell filed a timely appeal from the October 18, 2016, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on an agency conclusion that Mr. Campbell was discharged on September 27, 2016 for misconduct in connection with the employment. After due notice was issued, a hearing was held on November 28, 2016. Mr. Campbell participated. Kari Flaherty, Human Resources Business Partner, represented the employer.

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: John Campbell was employed by AMPC, Inc., as a full-time production laborer from 1991 until September 27, 2016, when the employer discharged him for repeated violation of the lock-out, tag-out protocol. Mr. Campbell's duties for at least the last five months of the employment involved operating industrial pressure cooking machinery that produced meat broth and flavoring from bone meal. From time to time the bone meal would become lodged in an auger during production. Mr. Campbell would have to dislodge the bone meal from the auger to facilitate production. Mr. Campbell received annual training in the applicable lock-out, tag-out protocol and was well familiar with the appropriate lock-out, tag-out procedure that he needed to follow before he attempted to work on the auger or any other part of his assigned machine. On three occasions between July 18, 2016 and September 27, 2016, Mr. Campbell failed to follow the appropriate lock-out, tag-out procedure before he commenced working on his assigned machine. The employer issued a reprimand in connection with each incident. Mr. Campbell signed each reprimand and indicated on each reprimand that he agreed with the employer's statement of the violation. The first violation occurred on July 18, 2016. The second violation occurred on September 20, 2016. On September 21, 2016, a coworker contacted Kari Flaherty, Human Resources Business Partner, to express concern about workplace safety in light of Mr. Campbell failure to follow the lock-out, tag-out procedure. In connection with the September 21 reprimand, the employer warned that Mr. Campbell would face additional discipline, up to discharge from the employment, if he committed another violation of the safety

protocol. The final incident that triggered the discharge followed just six days later. On September 27, supervised entered Mr. Campbell's work area as Mr. Campbell was committing the violation. At that point, Mr. Campbell immediately altered course and used the lock-out, tag-out procedure before he performed additional work on the machine. The final violation of the lock-out, tag-out procedure was documented through surveillance video. Ms. Flaherty and one or more of Mr. Campbell's supervisors reviewed the surveillance video.

In addition to the three lock-out, tag-out violations, the employer also considered back-to-back safety violations from June 14 and 15, 2016. In each instance, Mr. Campbell turned on a plunger valve to fill a tank and then left for dinner break. The tank overfilled, creating a safety hazard. The employer issued a written reprimand after the second incident. Mr. Campbell signed the reprimand and indicated on the document that he agreed with the employer's version of events.

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 evidence in the record establishes a pattern of safety violations that reflected a willful and wanton disregard of the employer's interests. The weight of the evidence indicates that Mr. Campbell knowingly, intentionally, and repeatedly disregarding important safety protocol that he knew was in place to protect him and others from serious injury in the workplace. Mr. Campbell not only signed each reprimand but also indicated on each reprimand that he agreed with the employer's statement outlining the violation. The weight of the evidence indicates that Mr. Campbell was fully aware in connection with the final incident that he was yet again violating the lock-out, tag-out policy. This explains why he immediately took steps once the supervisor was present to demonstrate compliance with the lock-out, tag-out protocol. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Campbell was discharged for misconduct in connection with the employment. Accordingly, Mr. Campbell is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Campbell must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The October 18, 2016, reference 01, decision is affirmed. The claimant was discharged on September 27, 2016 for misconduct in connection with the employment. 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. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs