

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WESLEY M STREAT
Claimant

APPEAL NO. 13A-UI-13119-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HTH COMPANIES INC
Employer

OC: 11/03/13
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 21, 2013, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on December 17, 2013. Claimant Wesley Streat participated. Eric Wilson represented the employer and presented additional testimony through Raechel Garmer.

The parties stipulated that the employer participated in the fact-finding interview that led to the November 21, 2013, reference 01, decision that allowed benefits.

ISSUE:

Whether Mr. Streat separated from the 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: HTH Companies, Inc., provided permanent workers to Grain Processing Corporation in Muscatine. Wesley Streat was employed by HTH as a full-time skilled laborer from 2007 until November 1, 2013, when Eric Wilson, Vice President of Operations, discharged him from the employment. Mr. Streat's immediate supervisor was Tim Nelson.

On or about October 23, 2013, Mr. Streat contacted Greg Hoberock, C.E.O., to let him know that the HTH workers at the Grain Processing facility had several concerns about Mr. Nelson that they would be bringing to the employer's attention. Mr. Streat and other HTH employees believed that Mr. Nelson had engaged in conduct that placed the employees' continued employment at the Grain Processing facility in jeopardy. Mr. Streat alleged that Mr. Nelson had stolen several items, some quite costly, from HTH and Grain Processing Corporation. Mr. Streat alleged that Mr. Nelson's theft and associated fraud were ongoing. Mr. Streat also alleged that Mr. Nelson was mistreating the workers he supervised. Mr. Hoberock told Mr. Streat that he would investigate and that Mr. Streat should let the investigation run its course.

Within a day or two of Mr. Streat's telephone call to Mr. Hoberock, it became apparent to Mr. Streat and others that the employer had notified Mr. Nelson of complaints against him. Mr. Nelson began to engage in conduct that was retaliatory in nature. Mr. Streat again contacted Mr. Hoberock to complain about the retaliatory conduct. Mr. Hoberock decided to send Eric Wilson, Vice President of Operations, to the Grain Processing facility to conduct an investigation.

Mr. Wilson went to the Grain Processing facility on October 30, 2013, to begin his investigation into Mr. Nelson's conduct and the workers' unrest. Mr. Wilson was aware that some of the employees had taken their concerns to one or more Grain Processing supervisors.

On November 1, Mr. Wilson gathered employees for a meeting on the grounds of Grain Processing facility. Mr. Wilson expressed his displeasure with the employees speaking with Grain Processing supervisors about their concerns and the employer's concern that the employees were thereby interfering with production at the facility. Mr. Streat was at the meeting. During the meeting, employees expressed frustration with the pace and method of the employer's investigation into Mr. Nelson. Multiple employees, including Mr. Streat, believed that the employer was hindering appropriate investigation of Mr. Nelson's conduct by allowing him to remain at the Grain Processing facility during the investigation.

During the November 1 meeting an employee, not Mr. Streat, said he was going to quit the employment if the employer did not remove Mr. Nelson from the workplace. Mr. Wilson asked the employee whether he was sure. Mr. Wilson asked whether anyone else wanted to join the employee who said he was going to quit. That employee and a few others stood up and walked out of the meeting. Mr. Streat also began to leave the meeting at that time, but did so with the intention of dissuading his coworkers from quitting. After a few employees had departed and as Mr. Streat was leaving the meeting, Mr. Wilson announced to the remaining employees that they would have a new supervisor the following Monday. Mr. Streat turned to Mr. Wilson and said, "You gotta be kidding me." Mr. Streat was frustrated with the timing of the announcement. Mr. Streat believed that if Mr. Wilson had made the announcement a moment earlier, the other employees would not have left the meeting. At that time, Mr. Wilson asserted that Mr. Streat also had quit the employment. Mr. Streat had not announced a quit. Mr. Streat had not left the grounds of Grain Processing grounds.

After the meeting, Mr. Streat went to another area of the grounds and met with the Grain Processing supervisor with whom he had the greatest contact during his employment. About 90 minutes after the meeting led by Mr. Wilson, Mr. Wilson located Mr. Streat speaking to the Grain Processing supervisor. Mr. Wilson alleged that Mr. Streat had quit. Mr. Wilson escorted Mr. Streat back to the HTH office trailer. Mr. Wilson had Mr. Streat collect his tools and then escorted Mr. Streat off the premises. Mr. Streat returned a few days earlier to collect additional tools.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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 871 IAC 24.25.

The weight of the evidence fails to establish a voluntary quit. At the time Mr. Wilson asserted Mr. Streat had quit, Mr. Streat was still on the Grain Processing grounds and still participating in the meeting led by Mr. Wilson. Mr. Streat had not announced a quit. Mr. Streat had begun to leave the meeting. Mr. Streat's act of beginning to leave the meeting, with nothing more, was insufficient to indicate an intention to sever the employment relationship. Mr. Streat was discharged from the employment by Mr. Wilson. That Mr. Streat was discharged and did not voluntarily quit is confirmed by Mr. Streat's subsequent actions and Mr. Wilson's subsequent actions. Mr. Streat did not leave the Grain Processing grounds. Instead, Mr. Wilson tracked Mr. Streat down and then made certain that he was off the property.

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).

Continued failure to follow reasonable instructions constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See Woods v. Iowa Department of Job Service, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See Endicott v. Iowa Department of Job Service, 367 N.W.2d 300 (Iowa Ct. App. 1985).

The weight of the evidence indicates that the employer ended Mr. Streat's employment out of concern that Mr. Streat had engaged in insubordinate behavior that was disruptive to the workplace and the employer's relationship with Grain Processing. The employer's expectation that employees would allow the employer the time and opportunity to conduct an investigation of Mr. Nelson conduct, and that employees recognize the employer's authority to conduct the investigation on the employer's terms, was reasonable. At the same time, Mr. Streat and others had legitimate concerns about Mr. Nelson's conduct, the impact of his presence at the workplace, and about the employer's apparent decision to allow Mr. Nelson to remain in the workplace while the investigation went forward. Mr. Streat's conduct in bringing legitimate concerns to the employer, and in bringing legitimate concerns to Grain Processing, whom he believed to have been the victim of felony theft, did not constitute insubordination within the meaning of the law. There is no indication that Mr. Streat had engaged in a pattern of refusing to follow reasonable directives from the employer.

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

DECISION:

The Agency representative's November 21, 2013, 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs