

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SCOTT W LEE**  
Claimant

**APPEAL NO. 15A-UI-08939-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OLYMPIC STEEL IOWA INC**  
Employer

**OC: 06/28/15**  
**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 July 31, 2015, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant had been discharged on June 30, 2015 for no disqualifying reason. After due notice was issued, a hearing was held on August 27, 2015. Claimant Scott Lee participated. Lori Bassow represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits One through Eight into evidence. 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.

**ISSUES:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

Whether the employer's account may be charged.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Scott Lee was employed by Olympic Steel Iowa, Inc., as a full-time machine operator from 2012 until July 1, 2015, when the employer discharged him from the employment. Mr. Lee's work involved operating an overhead crane to move steel. The final incident that triggered the discharge occurred on June 30, 2015. On that day, Mr. Lee operated a tandem crane to move steel. This was the second time in three years that Mr. Lee had operated a tandem crane. The tandem nature of the crane meant that the crane had two different lifting devices. The control layout of the crane Mr. Lee operated on June 30 was unfamiliar to Mr. Lee. While Mr. Lee was using the crane to lift a particular load, he accidentally moved the load on the other end of the tandem crane. As a result, some steel slid off of the lifting device that Mr. Lee had not intended to move. In making the decision to discharge Mr. Lee from the employment, the employer

considered another incident on June 2, 2015, wherein Mr. Lee accidentally set down a crane on an electronic scanning device. Mr. Lee had placed the scanning device in the location where it was later crushed by the crane.

Mr. Lee established a claim that was effective June 28, 2015 and received benefits.

### **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 fails to establish misconduct in connection with the employment. The weight of the evidence establishes that the final incident that triggered the discharge arose from a lack of familiarity with the controls for the particular crane. In short, the incident was an accident. The incident did not arise from carelessness or negligence. Nor did the incident involve a willful or wanton disregard of the employer’s interests. Accordingly, the final incident did not involve misconduct. The weight of the evidence establishes that the incident at the beginning of June 2015 arose from carelessness. Because the incident that triggered the discharge did not involve misconduct, the administrative law judge concludes that the claimant was discharged for no disqualifying reason. Accordingly, Mr. Lee is eligible for benefits, provided he is otherwise eligible. The employer’s account may be charged for benefits.

**DECISION:**

The July 31, 2015, 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

jet/pjs