

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**FRED G BEAN**

Claimant

**APPEAL NO. 08A-UI-02626-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MCFARLAND, KEVIN**  
**MCFARLAND HEATING & AIR**  
Employer

**OC: 02/17/08 R: 03**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Fred Bean filed a timely appeal from the March 19, 2008, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on April 2, 2008. The hearing in the matter was consolidated with the hearing in Appeal Number 08A-UI-02625-JTT. The Agency sent the parties a separate notice for each hearing. Mr. Bean participated. The employer did not participate. The employer did not respond to either of the two hearing notices or the instructions on the notices, which directed the parties to provide a telephone number for the hearing. At the request of the claimant, the administrative law judge took official notice of the documents submitted for, or generated in connection with, the fact-finding interview scheduled for March 10, 2008.

**ISSUE:**

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

Whether the claimant was discharged for a current act.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Fred Bean was employed by Kevin McFarland, doing business as McFarland Heating & Air, as a full-time HVAC Tech/Installer from March 2007 until February 11, 2008, when owner Kevin McFarland discharged him. On February 11, Mr. McFarland notified Mr. Bean that he would have to discharge him because he could not afford to employ four technicians. Mr. McFarland referenced a discussion he had initiated back in December 2007, at which time he warned the staff that budgetary concerns might force him to release one or more employees from their employment. In December, Mr. McFarland had also provided the employees with a memo setting forth the same concerns and warning.

In written materials submitted for the fact-finding interview, Mr. McFarland indicated that he made the decision to discharge Mr. Bean on January 31, 2008, but did not carry out the

discharge until February 11, 2008. Mr. McFarland had been upset that Mr. Bean had misdiagnosed a repair matter and had installed unnecessary parts as a result. On February 4, Mr. McFarland had issued a written reprimand to Mr. Bean, but that reprimand contained no mention of potential discharge from the employment.

### **REASONING AND CONCLUSIONS OF LAW:**

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).

The evidence in the record fails to establish misconduct in connection with the employment that would disqualify Mr. Bean for unemployment insurance benefits. The employer failed to participate and, thereby, failed to present the most direct and satisfactory evidence. The weight of the evidence in the record indicates that the employer either discharged Mr. Bean due to budgetary concerns or discharged Mr. Bean for matters that no longer constituted current acts at the time of the discharge.

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

**DECISION:**

The Agency representative's March 19, 2008, reference 02, decision is reversed. 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

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