

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**LEE GONQUOI**

Claimant

**APPEAL NO. 18A-UI-05138-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HORMEL FOODS CORPORATION**

Employer

**OC: 04/01/18**

**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Lee Gonquoi filed a timely appeal from the April 27, 2018, reference 01, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the Benefits Bureau deputy's conclusion that Mr. Gonquoi was discharged on March 28, 2018 for failing to perform satisfactory work despite being able to perform satisfactory work. After due notice was issued, a hearing was held on May 21, 2018. Mr. Gonquoi participated and presented additional testimony through Konyon Tinneh. Beverly Maez of Employers Unity represented the employer and presented testimony through Elvia Rodriguez. The hearing in this matter was consolidated with the hearing in Appeal Number 18A-UI-05139-JTT. Exhibits 1 through 11 and A were received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant.

**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: Lee Gonquoi was employed by Hormel Foods Corporation as a full-time sanitation worker from 2015 until March 29, 2018, when Elvia Rodriguez, Human Resources and Safety Manager, discharged him from the employment for incurring three written reprimands within a rolling 12-month period. Mr. Gonquoi's primary supervisor from December 2017 onward was Production Supervisor Brandy Hoover. Mr. Gonquoi's core work hours were 10:00 p.m. to 6:30 a.m. Monday evening through Saturday morning. However, Mr. Gonquoi routinely worked seven days per week, with holidays and some Sundays off.

The final incident that triggered the discharge occurred during the shift that started on March 25, 2018, when Mr. Gonquoi took longer than Ms. Hoover thought necessary to complete his assigned sanitation work. On that date, Ms. Hoover took Mr. Gonquoi away from his primary sanitation duties to have him clean the men's room. The state of the men's room made

cleaning it take 40 minutes. As Mr. Gonquoi was heading to his regular sanitation duties, a quality control representative stopped Mr. Gonquoi, reminded him that the plant was expecting visitors, and directed him to clean *under* all of the machines that Mr. Gonquoi would ordinarily clean. This directive added to the already heavy workload. In an effort to be thorough and to complete the added work, Mr. Gonquoi completed his cleaning duties two hours later than the supervisor desired. Mr. Gonquoi had completed the work as efficiently as he was able and had done work of satisfactory quality.

The employer considered prior concerns and associated reprimands when making the decision to discharge Mr. Gonquoi from the employment. Prior to the final incident, the next most recent incident that factored in the discharge occurred on December 19, 2017, when Mr. Gonquoi took an hour longer than Ms. Hoover thought necessary to complete a substantial portion of his assigned work. Mr. Gonquoi had completed the work as efficiently as he was able. Mr. Gonquoi still needed to soap equipment at the time Ms. Hoover checked in with him and deemed that he was taking too long. On March 2, 2017, a supervisor reprimanded Mr. Gonquoi for allegedly refusing to comply with the supervisor's directive that he abandon the duties he was performing and go work in a different area. Mr. Gonquoi had not refused the directive, but instead needed to change his apron and gloves before he could report to the area. The supervisor misinterpreted Mr. Gonquoi's actions as a refusal to follow the directive. On May 5, 2017, Mr. Gonquoi became ill late in his shift and left a production area without removing his lock-out/tag-out locks from the machine he had been cleaning. Mr. Gonquoi was vomiting and could not return to the food production area in that state. Due to his condition, Mr. Gonquoi asked a coworker to use Mr. Gonquoi's keys to remove the locks from the equipment. The supervisor reprimanded both employees for violating the employer's lock-out/tag-out policy, which required that the same employee perform the lock-out/tag-out and remove the locks. On May 8, 2017, a supervisor reprimanded Mr. Gonquoi for performing substandard work and taking too long to complete the assigned work. Mr. Gonquoi had taken four hours to perform work that the employer believed should take three hours. Mr. Gonquoi had been delayed in performing his work by the presence of production workers in the area he needed to clean. Mr. Gonquoi had to wait until the production workers were finished working in the area before he could perform his work duties. In his rush to complete the duties after the delay caused by the production workers, Mr. Gonquoi performed the work less thoroughly than usual and some of the work had to be re-done before production could re-start in the affected area. On May 11, 2017, a supervisor reprimanded Mr. Gonquoi for not wearing his safety goggles. Mr. Gonquoi had moved the goggles onto the top of his head when they became too fogged for him to see as he cleaned a machine. After most if not all of the reprimands, Ms. Rodriguez, the Human Resources Manager, issued a memo to Mr. Gonquoi to memorialize Mr. Gonquoi's status vis-à-vis the progressive discipline policy. After the December 2017 reprimand, Mr. Gonquoi was aware that his employment was in jeopardy and redoubled his efforts to perform satisfactory work despite the heavy workload.

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

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

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).

The evidence in the record fails to establish a discharge based on misconduct in connection with the employment. The evidence indicates extenuating circumstances attending the final incident that triggered the discharge. These included the directive to clean the men's room, which took Mr. Gonquoi away from his primary duties for 40 minutes, and the quality control representative's directive that Mr. Gonquoi perform additional cleaning duties over and above those he would ordinarily perform. The evidence establishes that Mr. Gonquoi worked as

efficiently as he was able and performed work that was qualitatively satisfactory. Mr. Gonquoi's good faith effort did not satisfy the supervisor. Under the circumstances, Mr. Gonquoi's failure to perform to the time expectations of the supervisor did not amount to misconduct. Because the evidence fails to establish misconduct in connection with the final incident that triggered the discharge, the evidence in the record does not provide a current act of misconduct. For that reason, the administrative law judge concludes that Mr. Gonquoi was discharged for no disqualifying reason. Because the evidence does not establish a current act of misconduct, the administrative law judge need not further consider the earlier incidents or whether they constituted misconduct. However, the administrative law judge notes that Mr. Gonquoi provided credible and reasonable explanations of mitigating circumstances relating to each incident that factored in the discharge decision. The employer failed to present testimony from witnesses with personal knowledge or other evidence sufficient to rebut Mr. Gonquoi's testimony.

Because the evidence establishes a discharge for no disqualifying reason, Mr. Gonquoi is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

**DECISION:**

The April 27, 2018, reference 01, decision is reversed. The claimant was discharged for no disqualifying reason. The discharge date was March 29, 2018. 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/rvs