

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL N VAN DORN
Claimant

APPEAL NO. 14A-UI-00928-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RAIL.ONE USA CORP
Employer

OC: 12/08/13
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Michael Van Dorn filed a timely appeal from the January 17, 2014, reference 03, decision that disqualified him for benefits. After due notice was issued, a hearing was held on February 17, 2014. Mr. Van Dorn participated. Larry Huinker represented the employer and presented additional testimony through Kevin Andresen and Lori Stewart.

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: Michael Van Dorn was employed by Rail.One USA Corporation for three-weeks as a full-time maintenance worker. Mr. Van Dorn started the employment on November 18, 2013. The employer discharged Mr. Van Dorn from the employment on December 10, 2013 for not showing the degree of initiative the employer expected from him. Though Mr. Van Dorn was hired to perform maintenance work in the employer's production plant, the employer did not have that work available for Mr. Van Dorn during the short period of his employment. The employer was instead in the process of building its production plant. The employer had Mr. Van Dorn and several new maintenance department hires assist with various aspects of constructing the production plant. From time to time, the employer would observe Mr. Van Dorn less engaged in the task at hand than the employer deemed appropriate. Mr. Van Dorn was a new employee, performed the work assigned to him, but did not seek out additional work to the extent the employer expected him to. Mr. Van Dorn is a decorated military veteran. Based on that background, the employer expected Mr. Van Dorn to immediately step into a leadership role, though the employer had not hired Mr. Van Dorn as a supervisor.

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. The evidence establishes instead that Mr. Van Dorn merely failed to perform to the employer's expectations. The evidence fails to establish that Mr. Van Dorn loafed on the job. The evidence indicates instead that Mr. Van Dorn performed assigned duties in good faith, but from time to time did not demonstrate the initiative or leadership that the employer expected of him based on his status as a decorated veteran. The mere fact that Mr. Van Dorn fell short of the employer's expectations is insufficient to establish misconduct in connection with the employment.

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

DECISION:

The Claims Deputy's January 17, 2014, reference 03, 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs