

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JANICE O BRANDT
Claimant

APPEAL NO. 20A-UI-01305-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

POLARIS INDUSTRIES INC
Employer

OC: 01/12/20
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Janice Brandt filed a timely appeal from the February 5, 2020, reference 02, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Ms. Brandt was discharged on January 8, 2020 for violation of a known company rule. After due notice was issued, a hearing was held on March 2, 2020. Ms. Brandt participated. Kelly Sievert represented the employer. Exhibit A was received into evidence.

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: Janice Brandt was employed by Polaris Industries, Inc. as a full-time welder in the metal paint department from 1999 until January 8, 2020, when the employer discharged her from the employment. Ms. Brandt's work hours were 6:00 a.m. to 2:30 p.m., Monday through Friday. Mike Hughes, Metal Paint Supervisor, was Ms. Brandt's immediate supervisor.

The final incident that triggered the discharge occurred on Monday, January 6, 2019. That was Ms. Brandt's first day back at work after a plant shutdown and temporary layoff that had started after Ms. Brandt finished her shift on Friday, December 20, 2019. During the shutdown, Ms. Brandt had taken her primary vehicle to the repair shop. Ms. Brandt kept her employee ID badge and clock-in fob on the visor in primary vehicle. Ms. Brandt needed those items to clock in and clock out at work. On the weekend before Ms. Brandt was due to return to work, Ms. Brandt realized she was without the ID and fob. Ms. Brandt attempted to contact the owner of the repair shop in an effort to retrieve the badge and fob, but was unable to connect with the shop owner. Ms. Brandt knew that her first day or two at work after the shutdown would be dates when she needed to be at work to assist and lining up work for production. Ms. Brandt elected to report for work as scheduled without her ID badge and fob, rather than to miss work just to avoid being disciplined for not having the ID and fob. The employer discharged

Ms. Brandt on January 8, 2020 in response to Ms. Brandt not having her ID or fob on January 6, 2020.

In making the decision to discharge Ms. Brandt from the employment, the employer considered prior incidents wherein Ms. Brandt arrived at work without her ID badge and fob. Ms. Brandt sometimes used a secondary vehicle and forgot to collect her ID badge and fob from her primary vehicle. The next most recent such incident had occurred on October 22, 2019. The employer issued a written reprimand on October 24, 2019 in response to the October 22 incident. Ms. Brandt's supervisor counseled Ms. Brandt that it would be better for her to miss work than to have another forgotten fob incident. Ms. Brandt had also forgotten her fob on January 9, June 11, July 17, August 22, and September 27, 2019. The employer had issued a reprimand for the January incident in July 2019 and had issued a reprimand for the September 27 incident on October 21, 2019. There had been additional missing key fob incidents in 2018.

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 establishes a discharge for no disqualifying reason. There were extenuating and mitigating circumstances surrounding Ms. Brandt's forgetting of her clock-in fob on January 6, 2020. Ms. Brandt was returning from a short-time layoff. Ms. Brandt realized she lacked the fob before she was set to report for work and took good-faith, reasonable steps to remedy the situation before her January 6 shift. Ms. Brandt made a reasonable decision to report for her shift. The employer's stated position that it was better for Ms. Brandt to be absent from work than to appear without the fob defies logic. The evidence indicates that Ms. Brandt had the employer's best interests in mind when she made the decision to appear for work on January 6, 2020 despite not having her fob. There is no indication of a willful or wanton disregard of the employer's interests in connection with that incident. The next most recent similar incident of forgetfulness occurred 11 weeks, almost three months, earlier. Even as one examines the pattern, the pattern of forgetfulness is insufficient to demonstrate conduct that rises to the level of willful and wanton disregard of the employer's interests. Ms. Brandt is eligible for benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits.

DECISION:

The February 5, 2020, reference 02, decision is reversed. The claimant was discharged on January 8, 2020 for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn