

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

KENNETH D PAUL
Claimant

APPEAL NO. 18A-UI-04503-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TPI IOWA LLC
Employer

OC: 03/25/18
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Kenneth Paul filed a timely appeal from the April 11, 2018, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on the Benefits Bureau deputy's conclusion that Mr. Paul was discharged on March 19, 2018 for violation of a known company rule. After due notice was issued, a hearing was held on May 4, 2018. Mr. Paul participated personally and was represented by attorney Dustin Mueller. The employer registered a telephone number for the hearing, but did not participate in the hearing. The employer representative, Danielle Williams, was not available at the registered telephone number at the time of the hearing. The administrative law judge made three attempts to reach Ms. Williams for the hearing and left three voicemail messages for Ms. Williams at the number registered for the hearing.

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: Kenneth Paul was employed by TPI Iowa, L.L.C. as a full-time 2KM Operator until March 19, 2018, when a human resources representative discharged him for allegedly yelling at another employee, Mike Roam. Mr. Paul did not yell at Mr. Roam. The factory floor is loud with ambient noise. Mr. Paul has a speech impediment related to a serious neck injury. Mr. Paul has found that others cannot hear him unless he speaks with a louder voice. Mr. Paul spoke to Mr. Roam with the same volume Mr. Roam used to speak with Mr. Paul.

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 employer did not participate in the appeal hearing and did not present any evidence to meet its burden of proving that a discharge based on misconduct in connection with the employment.

The evidence in the record does not establish misconduct. Mr. Paul was discharged for no disqualifying reason. Accordingly, Mr. Paul is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The April 11, 2018, reference 01, decision is reversed. The claimant was discharged on March 19, 2018 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/rvs