

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JALEN M BANKS
Claimant

APPEAL NO. 18A-UI-03980-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RYDER INTEGRATED LOGISTICS INC
Employer

**OC: 02/18/18
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Jalen Banks filed a timely appeal from the March 19, 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. Banks was discharged on February 16, 2018 for insubordination in connection with the employment. After due notice was issued, a hearing was held on April 23, 2018. Mr. Banks participated. Michele Hawkins of Equifax represented the employer and presented testimony through Jenna Tate. Exhibit 1 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: Jalen Banks was employed by Ryder Integrated Logistics, Inc. as a full-time material handler from May 2017 until February 16, 2018, when Mark Johnson, Customer Logistics Manager, discharged him from the employment. Mr. Banks' material handler duties primarily involved operating a forklift to move freight in and out of freight trailers. Mr. Johnson became Mr. Banks' supervisor on January 22, 2018. Mr. Banks' usual work hours were 6:00 a.m. to 2:00 p.m., Monday through Friday.

The sole incident that factored in the discharge occurred at the end of Mr. Banks' work day on February 15, 2018. On that day, Mr. Banks began his work day at 4:01 a.m. due to required overtime work. Mr. Banks was scheduled to be done with his shift at 2:00 p.m. Pursuant to the employer's time-keeping protocol, Mr. Banks was allowed to clock out at any time between 1:55 p.m. and 2:00 p.m. Mr. Banks had started the work day operating a forklift. Mr. Banks and a fellow forklift operator were not getting along that day, so Mr. Bank spent most of his workday performing packing duties rather than forklift duties. Packing was part of the duties included in the material handler duties. At about 1:50 p.m. Mr. Johnson approached Mr. Banks and told Mr. Banks that he needed Mr. Banks to operate a forklift to load freight onto a truck. Mr. Banks referenced the time and asked why he had to load the freight when he had been performing

packing duties, rather than forklift duties, throughout the day. Mr. Johnson told Mr. Banks that he had to perform the work because his shift did not end until 2:00 p.m. Mr. Johnson then went to get a forklift for Mr. Banks to operator. When Mr. Johnson returned with the forklift, Mr. Banks had gone. Mr. Banks had clocked out at 1:58 p.m. Under the employer's policies, Mr. Banks was not required to stay beyond the scheduled end of his shift. Under the employer's policies, Mr. Banks was obligated to comply with any "safe and lawful directive" and could be discharged for "conduct, actions or performance [that] violates or conflicts with Ryder's policies."

When Mr. Banks reported for work on February 16, 2018, Mr. Johnson notified him that he was suspended indefinitely. Mr. Johnson and Jenna Tate, Human Resources Representative, made the decision to discharge Mr. Banks from the employment. Ms. Tate conducted a cursory investigation of the matter that included speaking to Mr. Johnson and to clerk Nancy Harman, but that excluded speaking with Mr. Banks to hear his side of the matter. A couple hours after Mr. Johnson sent Mr. Banks home, Mr. Johnson telephoned Mr. Banks and notified Mr. Banks that he was discharged from the employment. Ms. Tate was listening at Mr. Johnson's end of the line.

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).

Continued failure to follow reasonable instructions constitutes misconduct. See *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985).

The weight of the evidence in the record fails to establish misconduct in connection with the employment that would disqualify Mr. Banks for unemployment insurance benefits. The weight of the evidence establishes that Mr. Banks left work on February 15, 2018 at the scheduled end of his shift at the appropriate time and in keeping with the employer's clock out protocol. The employer presented insufficient evidence to establish that Mr. Johnson's directive and conduct at the end of Mr. Banks' February 15, 2018 shift was reasonable under the circumstances. The employer fails to present testimony from Mr. Johnson or anyone else present for the February 15 end of shift incident. The employer witness was unable to state whether other forklift operators were available to perform the work or why Mr. Johnson singled out Mr. Banks as the person who would have to perform the last-minute duties at the end of a 10-hour shift. It was not unreasonable for Mr. Banks to ask why the work was being assigned to him when another employee had been performing the forklift duties that day. The weight of the evidence establishes that performing the task would have required Mr. Banks to stay late. The weight of the evidence establishes that Mr. Johnson did not return with the forklift until after Mr. Banks had signed out. Given that Mr. Banks signed out at 1:58 p.m., the evidence indicates that Mr. Johnson returned with the forklift at that time or later, not at 1:55 p.m. as the employer witness asserted. Mr. Banks reasonably expected to leave work on time at the end of his 10-hour workday. The circumstances of this incident do not establish an early departure or an unreasonable refusal to comply with a reasonable directive. Nor does the evidence establish a pattern of such behavior.

While the employer may have been within its rights to discharge Mr. Banks from the at-will employment, the discharge was not based on misconduct in connection with the employment and does not disqualify Mr. Banks for unemployment insurance benefits. Mr. Banks is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

DECISION:

The March 19, 2018, reference 01, decision is reversed. The claimant was discharged on February 16, 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