

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAYEN B TURNER

Claimant

APPEAL NO. 10A-UI-08308-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HORMEL FOODS CORPORATION

Employer

OC: 05/09/10

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Kayen Turner filed a timely appeal from the June 4, 2010, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on July 27, 2010. Mr. Turner participated. Troy Hawkshead, Plant Manager, represented the employer and presented additional testimony through Erin Montgomery, Plant Controller. Exhibit One 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: Kayen Turner was employed by Hormel foods Corporation as a full-time smokehouse operator from July 2008 until May 6, 2010, when Troy Hawkshead, Plant Manager, discharged him for unsafe work practices and falsification of a U.S.D.A. document. Mr. Turner was responsible for cooking, cooling, and measuring the pH of pepperoni, as well as documenting the same on the appropriate United States Department of Agriculture form. Mr. Turner had received appropriate training and understood that the proper performance of his duties was integral to ensuring food safety in product he assisted in processing. On May 6, 2010, a U.S.D.A. inspector inspected the pH documentation Mr. Turner had entered concerning a batch of pepperoni he had been cooking. The inspector noted that the time Mr. Turner had documented as the time he measured the pH level of the pepperoni had not yet occurred. Mr. Turner documented that he had taken the pH measurements at 10:50 p.m., but it was not yet 10:50 p.m. Mr. Turner had knowingly and intentionally entered false documentation concerning a pH measurement he had not taken. Mr. Turner knew the false documentation violated federal food safety regulations. Mr. Turner otherwise intentionally deviated from the established pepperoni cooking procedure. In the course of investigating this incident, the employer found documentation that indicated Mr. Turner had engaged in the same unsafe food processing on April 23, 2010.

In making the decision to discharge Mr. Turner from the employment, the employer also considered the unsafe manner in which Mr. Turner obtained pH readings on May 6, 2010. Mr. Turner crawled on racks to a height of several feet off the ground to get the measurement, thereby placing himself, the employer's production process at risk, and food safety in risk.

Mr. Turner was motivated by a desire to finish his work as soon as possible so he could go home, even though that meant deviating from safe food processing practices.

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 weight of the evidence in the record establishes that Mr. Turner acted with willful and wanton disregard of the employer when he deviated from established food safety practices on May 6 and April 23, 2010 and when he falsified U.S.D.A. documents on those days. Mr. Turner acted in willful and wanton disregard of the employer's interests when he climbed several feet up on to racks to take the untimely pH measurements.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Turner was discharged for misconduct. Accordingly, Mr. Turner is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Turner.

DECISION:

The Agency representative's June 4, 2010, reference 02, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The employer's account will not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs