

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DUSTIN J BAUMLER
Claimant

APPEAL NO. 15A-UI-06040-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BODENSTEINER IMPLEMENT COMPANY
Employer

OC: 04/26/15
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 15, 2015, reference 02, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant had been discharged on April 23, 2015 for no disqualifying reason. After due notice was issued, a hearing was held on July 7, 2015. Claimant Dustin Baumlner did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Jason Gardner, Service Manager, represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant (DBRO), which record indicates that no benefits have been disbursed to the claimant. Exhibits One through Eight were received into evidence.

ISSUES:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer sells, services and repairs John Deere farm equipment. Dustin Baumlner was employed by Bodensteiner Implement Company as a full-time service technician from February 23, 2015 until April 23, 2015, when Jason Gardner, Service Manager, and Lane Welch, Corporate Service Manager, discharged him from the employment. Mr. Gardner was Mr. Baumlner's immediate supervisor. Mr. Baumlner's regular work hours were 7:30 a.m. to 5:00 p.m., Monday through Friday. The employer hired Mr. Baumlner in part based on his representation that he had years of experience with diagnosing and servicing farm equipment, plumb hoses, and could perform simple electrical work. The employer learned during the employment that the Mr. Baumlner did not possess the skill set the employer expected.

The employer's decision to discharge Mr. Baumler was based on a number of concerns that arose during the course of the two-month employment. The final incident that triggered the discharge concerned Mr. Baumler's work on customer's seed tender. Mr. Baumler had worked on the piece of equipment in March to plumb the hydraulics. The customer contacted the employer a few weeks later to complain that the seed tender was not working right. The employer sent another service technician to examine that seed hauler and the service tech determined that the hydraulics had not been plumbed correctly. When Mr. Gardner spoke to Mr. Baumler about the issue, Mr. Baumler asserted that he had followed the appropriate steps to plumb the hydraulics.

In making the decision to discharge Mr. Baumler from the employment, the employer considered other performance issues.

The employer paired Mr. Baumler with multiple more senior service techs. The pairings did not work well in light of Mr. Baumler's habit of balking at taking direction from the other service techs. Mr. Baumler would assert that he had his own way of performing the work. During the first week of the employment, the employer assigned Mr. Baumler to wash a couple combines. The employer expected the work would take longer than usual, since it was Mr. Baumler's first experience with washing combines. Other service techs provided instruction on how best to perform the work. Mr. Baumler did not follow those instructions and performed substandard work. The employer then had to re-wash the combines. About a month into the employment, Mr. Gardner pulled Mr. Baumler aside and told him that he needed to listen and follow directives from other service techs.

On March 17, the employer assigned Mr. Baumler to mount extra headlights on a piece of equipment. Mr. Gardner told Mr. Baumler that he thought the project should take four or five hours. The project involved custom wiring. Mr. Baumler ended up taking ten hours to complete the work and completed the project on March 18. Mr. Baumler acknowledged that it had taken him longer than expected to complete the work. Because employer intended to bill the customer by the hour for the work, the employer, had to adjust the amount of time for which the customer would be billed so that the customer was only charged for the amount of time the employer believed the project should have taken, rather than time Mr. Baumler took on the project.

On April 13, Mr. Baumler was assigned to diagnose and repair an electrical problem with a lawn tractor. Mr. Baumler did not successfully diagnose or repair the mower. Mr. Baumler put extra parts on the mower and broke another part in the process of working on the mower. When the customer came to collect the mower, the mower would not start. Mr. Baumler acknowledged at that time that he needed more training in diagnosing and repairing electrical problems.

On or about April 21, the employer assigned Mr. Baumler to do some detailing work on a piece of farm equipment on the employer's sales lot. The work involved some painting of parts to prevent them from rusting and greasing of parts. Mr. Baumler performed the greasing work, but did not perform the painting. Mr. Baumler acknowledged that the work he performed took longer than expected.

Mr. Baumler's attendance was a problem for most of the employment. On February 26 and 27, and on March 3, 4, 10, 13, and 14, Mr. Baumler was late for personal reasons. On March 2, Mr. Baumler left work early without permission.

In connection with the March 4, 2015 late arrival, Mr. Baumler was intentionally dishonest with the employer. Mr. Baumler notified his supervisor that he would be late getting to work because

he needed to deliver documentation to the human resources staff at the employer's Decorah location. The supervisor learned that Mr. Baumler had actually dropped off the documentation the evening before. Mr. Baumler continued to try to mislead the employer about the matter until the supervisor made clear that he was fully aware of the particulars. At that point, Mr. Baumler told the supervisor that he had been late because he need to help his parents with a task.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

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). 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).

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).

In order for a claimant’s absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant’s *unexcused* absences were excessive. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32(8). Absences related to issues of personal responsibility such as transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer’s policy regarding notifying the employer of the absence. Tardiness is a form of absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Employers may not graft on additional requirements to what is an excused absence under the law. See Gaborit v. Employment Appeal Board, 743 N.W.2d 554 (Iowa Ct. App. 2007). For example, an employee’s failure to provide a doctor’s note in connection with an absence that was due to illness properly reported to the employer will not alter the fact that such an illness would be an excused absence under the law. Gaborit, 743 N.W.2d at 557.

The evidence in the record establishes misconduct in connection with the employment. The weight of the evidence indicates that Mr. Baumler did not in fact have the skillset that he asserted he possessed at the time of hire. Mr. Baumler’s work on the hydraulics project at the end of the employment demonstrated that, as did Mr. Baumler’s work on the lawn tractor a couple days before the discharge. There were other instances, wherein Mr. Baumler demonstrated the ability to perform work, but not as fast as the employer needed. Those instances did not constitute misconduct. The evidence establishes several instances where Mr. Baumler unreasonably did not perform work as reasonably instructed. The most recent such instance was the failure to paint the rust-prone parts on the piece of equipment. Though there was no “current” unexcused absence, the evidence indicates several unexcused absences earlier in the employment. The evidence also indicates intentional dishonesty in connection with the March 4 late arrival.

The overall pattern of conduct, from the misrepresentation at the time of hire, to the final incidents that triggered the discharge were sufficient to establish misconduct in connection with the employment that would disqualify Mr. Baumler for unemployment insurance benefits. Mr. Baumler 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.

Because Mr. Baumler did not receive any unemployment insurance benefits, there is not overpayment of benefits to address.

DECISION:

The May 15, 2015, reference 02, decision is reversed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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