

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW L THOMSON

Claimant

APPEAL NO. 17A-UI-04084-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ARCHER-DANIELS-MIDLAND CO

Employer

OC: 03/19/17

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Matthew Thomson filed a timely appeal from the April 6, 2017, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on the claims deputy's conclusion that Mr. Thomson was discharged on March 23, 2017 for gross negligence in connection with the employment. After due notice was issued, a hearing was held on May 5, 2017. Mr. Thomson participated. Bryce Albrechtsen represented the employer and presented additional testimony through Kurt Klostermann. Exhibits 1 through 5 were 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: Matthew Thomson was employed by Archer-Daniels-Midland Company (ADM) as a full-time Maintenance 1 Electrician at the ADM plant in Clinton until March 23, 2017, when Dean Brainerd discharged him from the employment based on a lockout/tagout violation that occurred on March 20, 2017. Mr. Thomson had performed electrical work at the Clinton plant for several years as an employee of another company before he became an ADM employee in 2015. ADM stresses workplace safety. This is in part due to a worker death that occurred at the plant several years ago. At the time Mr. Thomson began as an ADM employee the employer had him participate in safety training that included lockout/tagout procedure.

On March 20, 2017, Mr. Thomson had to leave in the middle of his journeyman electrician exam to assist a coworker with troubleshooting an electrical issue with a motor starter. Mr. Thomson desired to resolve the electrical issue so that he could return and complete his journeyman electrician exam. Mr. Thomson properly followed all but one of the lockout/tagout steps as he performed the troubleshooting work. Mr. Thomson thought that the power source for auxiliary contacts on a motor starter was the main power source that he had locked out and tagged out. Mr. Thomson was unaware that electrical power to the auxiliary contacts actually came from

another power source that had not been locked out and was unaware that it was necessary to pull fuses to disconnect the current to the auxiliary contacts before changing out the auxiliary contacts. The employer's lockout/tagout procedure included a strict rule that required Mr. Thomson to use his voltmeter to test for electrical current before he put any tool to a machine. In his haste to return to his journeyman exam, Mr. Thomson changed the auxiliary contacts without first using his voltmeter to test for electrical current. There was indeed live current running to the auxiliary contacts. Mr. Thomson acknowledges that he could have been electrocuted in the process of changing out the auxiliary contacts.

When Matt Ernst learned of lockout/tagout violation, he escorted Ms. Thomson from the plant per protocol and reported the violation to Kurt Klostermann, Superintendent of Process Controls. Mr. Thomson fully cooperated with the investigation and conceded his error in failing to use the voltmeter. Compliance with the lockout/tagout procedure was one the employer's written "Cardinal Rules." Under the employer's General Plant Rules "[w]illful misconduct or gross negligent violation" of the lockout/tagout would lead to termination of the employment. The employer's written policy defined gross negligence as follows:

An unintentional, but voluntary total disregard of the need to use reasonable care, or serious carelessness which could result in significant foreseeable injury to self, other colleagues or property. Actions that reflect a lack of concern or attitude of indifference to duty."

Upon completion of its investigation, the employer discharged Mr. Thomson from the employment.

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).

The evidence in the record establishes that Mr. Thomson violated the employer's written work rules on March 20, 2017, when in his haste to return to his journeyman electrician exam he assumed he had properly locked out power to the auxiliary contacts and failed to use his voltmeter to test for current before changing the auxiliary contacts. Mr. Thomson's negligent failure to use his voltmeter could have resulted in serious injury to Mr. Thomson. However, Mr. Thomson's isolated and momentary lapse of judgment did not arise from an intentional and substantial disregard of the employer's interests. While the decision to end the employment was within the employer's discretion, the discharge does not disqualify Mr. Thomson for unemployment insurance benefits. Mr. Thomson is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

DECISION:

The April 6, 2017, reference 01, decision is reversed. The discharge was not based on an intentional and substantial disregard of the employer's interests and therefore does not disqualify the claimant for unemployment insurance benefits. 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/scn