IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

BRIAN FARLEY
Claimant

FARLEYS WHOLESALE TIRE
TONY COX; SEAN FARLEY
Employer

APPEAL NO. 16A-UI-12461-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10/30/16
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Brian Farley filed a timely appeal from the November 17, 2016, reference 03, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on an agency conclusion that Mr. Farley was discharged on October 28, 2018 for failure to follow instructions in the performance of his job. After due notice was issued, a hearing was held on December 8, 2016. Brian Farley participated. Tony Cox represented the employer. Exhibit A 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: Tony Cox owns and operates Farley's Wholesale Tire in Boone. Mr. Cox and Sean Farley bought the business from the previous owner, Mike Farley. The sale was effective January 1, 2016. More recently, Mr. Cox purchased Sean Farley's interest in the business to become sole owner. Brian Farley became a full-time employee of Farley's Wholesale Tire in 2000 and continued in his full-time employment despite the January 1, 2016 change in ownership. Mike Farley and Brian Farley are brothers. Sean Farley is Brian Farley's nephew. Before and after the January 1, 2016 change in ownership, Brian Farley's primary duties involved balancing tires and performing oil changes. Brian Farley's duties also regularly involved taking old tires off metal wheels and placing new tires on the wheels. Brian Farley would change at least 8 to 10 tires per day. The employer's store changes 40 to 50 tires per day. The employer would generally have two or three employees on duty to change tires.

The vast majority of the wheels the employer dealt with as part of its business contained a built-in tire pressure sensor. The employer had two tire changing machines. One was an older style that could be used to change tires only on wheels that lacked the tire pressure sensors. The second, newer style machine, was the only tire changing machine that could be used to

change tires on wheels that had sensors. Both machines were automated. The newer style machine was no more difficult to us than the older style machine. The newer style machine has been around for about a decade.

Mr. Cox discharged Brian Farley from the employment on October 28, 2016 in response to Mr. Farley's repeated refusal to change tires on wheels that had tire pressure sensors. At several points during the course of Brian Farley's employment under Mr. Cox's ownership, Mr. Cox directed Mr. Farley to learn how to use the newer tire changing machine and to begin changing tires on wheels that had the tire pressure sensors. Each time Mr. Cox issued the directive, Brian Farley refused the directive. Mr. Farley's rationale for refusing the directive was that he had broken a large number of tire pressure sensors while employed by his brother and that his brother had eventually ceased requiring him to change tires on wheels with the tire pressure sensors. Mr. Cox expected that sensors would be broken on occasion and that such matters were just a cost of doing business. Mr. Cox never told Brian Farley that he would be disciplined or docked pay in connection with a broken sensor. About three or four months prior to Mr. Farley's discharge from the employment, the level of business increased and Mr. Cox told Mr. Farley once more that he needed him to start changing the tires on wheels with the tire pressure sensors. Mr. Cox refused. The next directive and refusal came about a month later. About two weeks before Mr. Cox discharged Mr. Farley from the employment, he told Mr. Farley that he either needed to begin changing tires that had the sensors or Mr. Cox would replace him with another employee. On October 18, 2016, Brian Farley sent Mr. Cox a text message that stated as follows: "Tony I'm not going to do sensors or run those tire machines that you want me to use. I've broke hundreds of sensors, I won't do any sensors ever." Mr. Farley continued his refusal through the last day of the employment, when Mr. Cox notified him he no longer needed Mr. Farley's services.

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).

The evidence in the record establishes that Mr. Farley repeatedly and unreasonably refused to comply with the employer's very reasonable directives that he change tires on wheels with tire pressure sensors and that he learn to use the tire changing machine to perform that work. Mr. Farley's ongoing refusal did indeed constitute insubordination and misconduct in connection with the employment. Mr. Farley's assertion that the employer discriminated against him based on his age or surname is wholly without merit. The employer just needed Mr. Farley to make a relatively minor adjustment and perform the work that needed to be done. Mr. Farley refused to do that and cannot reasonably claim to be unemployed through no fault of his own. Because

the evidence establishes a discharge for misconduct in connection with the employment, Mr. Farley is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Farley must meet all other eligibility requirements. The employer's account shall not be charged.

DECISION:

The November 17, 2016, reference 03, decision is affirmed. The claimant was discharged for misconduct in connection with the employment. 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 amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs