

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

CHRISTOPHER J NELSON
Claimant

APPEAL NO. 18A-UI-09035-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRAD DEERY MOTORS
Employer

OC: 07/22/18
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Christopher Nelson filed an appeal from the August 22, 2018, reference 02, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the Benefits Bureau deputy's conclusion that Mr. Nelson was discharged on June 18, 2018 for failure to follow instructions in the performance of his job. After due notice was issued, a hearing was held on September 17, 2018. Mr. Nelson participated. Beverly Maez of Employers Unity represented the employer and presented testimony through Daniel Gries.

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: Christopher Nelson was employed by Brad Deery Motors as a full-time Finance Manager from June 2017 until June 18, 2018, when Daniel Gries, Finance Director, discharged him from the employment. Mr. Gries was Mr. Nelson's immediate supervisor. The final incident that triggered the discharge was Mr. Gries' discovery on June 18, 2018 of a vehicle title paperwork that Mr. Nelson had put in his desk drawer and forgotten about for several weeks. Mr. Nelson's duties included making certain that all legal documents associated with a vehicle sale were completed pursuant to statutory requirements. While the employer had a title clerk, Mr. Nelson shared in the responsibility to complete and submit title documents in accordance with statutory requirements. The title documents in question were from a transaction that occurred 13 weeks earlier. Mr. Nelson, the title clerk, and Mr. Gries had engaged in discussion regarding the unusual circumstances surrounding the title. Mr. Nelson then placed title documents in his desk drawer and nothing further happened with the matter until Mr. Gries discovered the documents on June 18. In the meantime, the customer who purchased the vehicle was operating the vehicle with an erroneous title.

In making the decision to discharge Mr. Nelson from the employment, the employer considered a number of earlier concerns. On May 31, 2018, Mr. Nelson sent erroneous customer information to a bank in support of a loan. Mr. Nelson sent information to the bank that identified the customer's grandfather of the same name as the customer seeking the loan. Mr. Nelson figured out his mistake when the bank responded as if the customer had a high credit score when Mr. Nelson knew the customer had a much lower credit score and would not qualify for the lowest interest rate. On January 21, the employer issued a reprimand to Mr. Nelson for an omitted signature on an installment contract and omitted initials on an auto trade. In November 2017, the employer issued a reprimand to Mr. Nelson for providing intentionally false information to a bank in support of an auto loan. The customer, a Social Security benefits recipient, was upset when she learned that Mr. Nelson had reported to the bank on the loan application that her monthly income was substantially higher than it was. While it was common practice when dealing with such customers to "gross up" their income on the loan application, the figure Mr. Nelson used on the loan application went well beyond that.

The employer also considered incidents of offensive conduct when making the decision to discharge Mr. Nelson from the employment. In May 2018, Mr. Nelson was interacting with a sales representative immediately after an attractive young female had departed. During that interaction, Mr. Nelson looked toward the chair where the customer had been sitting and acted as if was sniffing the chair. In April 2018, Mr. Gries issued a reprimand to Mr. Nelson for yelling at Mr. Gries while he was on the phone and directing additional derogatory statements at Mr. Gries. On January 21, the employer issued a reprimand to Mr. Nelson for yelling at a member of management and refusing a directive to leave the manager's office.

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).

An employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. *Henecke v. Iowa Department of Job Service*, 533 N.W.2d 573 (Iowa App. 1995). Use of foul language can alone be a sufficient ground for a misconduct disqualification for unemployment benefits. *Warrell v. Iowa Dept. of Job Service*, 356 N.W.2d 587 (Iowa Ct. App. 1984). An isolated incident of vulgarity can constitute misconduct and warrant disqualification from unemployment benefits, if it serves to undermine a superior's authority. *Deever v. Hawkeye Window Cleaning, Inc.* 447 N.W.2d 418 (Iowa Ct. App. 1989).

The evidence in the record establishes a discharge based on misconduct in connection with the employment. The final incident involved negligence that lasted for weeks before Mr. Gries discovered the title documentation that needed to be corrected. That incident followed multiple instances of inappropriate and offensive conduct, and at least two additional instances or negligence and/or fraud. The pattern of conduct demonstrated an intentional and substantial disregard of the employer's interests. Mr. Nelson is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Nelson must meet all other eligibility requirements. The employer's account shall not be charged.

DECISION:

The August 22, 2018, reference 02, 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs