

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DAVID B PLAGMAN
Claimant

REMBRANDT ENTERPRISES INC
Employer

APPEAL NO. 20A-UI-06370-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/19/20
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 9, 2020, reference 01, decision that allowed benefits to the claimant provided he met all other eligibility requirements and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on April 15, 2020 for no disqualifying reason. After due notice was issued, a hearing was held on July 22, 2020. Claimant David Plagman participated. Amanda Doonan represented the employer and presented additional testimony through Toby Goss. The administrative law judge took official notice of the following Agency's administrative records: DBRO, KPYX and KFFV.

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: David Plagman was employed by Rembrandt Enterprises, Inc. as a full-time sanitation manager until April 15, 2020, when the employer discharged him from the employment. The employer packages eggs. Mr. Plagman began his employment with Rembrandt in 2011 and assumed the sanitation manager duties in November 2018. As Sanitation Manager, Mr. Plagman supervised six subordinates. Mr. Plagman was responsible for ensuring the master sanitation schedule was adhered to and that cleaning tasks were performed in a satisfactory manner. Mr. Plagman's core work hours were 8:00 a.m. to 5:00 p.m., Monday through Friday. Mr. Plagman also worked second shift as needed and worked one to two weekends per month.

The final incident that triggered the discharge occurred on April 13, 2020. On that day, Mr. Plagman and Operations Manager Chase Doyle were in a meeting when someone on the production floor called Mr. Doyle to advise that the production line had run out of "line lube." The lubricant helped egg cartons to move along the conveyor belt without getting stuck or tipping over. After their meeting, Mr. Plagman and Mr. Doyle went to the production line and discovered that someone had filled the line lube barrel with water. Mr. Plagman had not

directed anyone to put water in the barrel and was unaware who had filled the barrel with water. Mr. Plagman subsequently told Mr. Doyle that before his time as Sanitation Manager, the practice had been to fill the line lube barrel with water if line lube was not available. Mr. Plagman told the employer he suspected this is what happened in connection with the April 13 incident. At the time of discharge, the employer asserted that the Mr. Plagman had changed his story about how the line lube barrel came to be filled with water. Mr. Plagman had not changed his story and had instead told the employer what he knew.

At the time of discharge, the employer was also concerned that Mr. Plagman had prepared an over-simplified "root cause analysis" or RCA after the break room door handle tested positive for staphylococcus bacteria. The employer was also concerned that Mr. Plagman had turned in the RCA late. Mr. Plagman had collaborated with the quality assurance manager and supervisor in completing the RCA. Mr. Plagman deleted some slides from the RCA that he thought were unnecessary. Mr. Plagman accurately concluded in the RCA that the staph bacteria originated from an employee's hand coming in contact with the door handle after entering the plant. Through the RCA, Mr. Plagman identified a need for a hand sanitizer station in the vicinity of the employee entrance. Mr. Plagman turned in the RCA on April 10, though the employer deemed it due on April 3.

On March 9, 2020, the employer had placed Mr. Plagman on a performance improvement plan (PIP) and had given him 90 days to address the concerns raised in the PIP. The PIP required that Mr. Plagman ensure that cleaning tasks were completed by the deadlines set forth on the master sanitation schedule, that the "action item" repair tasks be completed in a timely manner, that "root cause analysis" be completed as needed in collaboration with the quality department, that Mr. Plagman spend 60 percent of his work day on the production floor addressing sanitation processes, and that he complete appropriate documentation to verify that sanitation tasks have been completed.

After the PIP was put in place, Mr. Plagman complied with its terms. On March 25, the employer told Mr. Plagman that some of his subordinates had not completed computer training modules that were due March 31. Mr. Plagman took note of the employer's concern and addressed the issue. On April 1, the employer brought to Mr. Plagman's attention that a few tasks on the master sanitation schedule that needed to be completed by April 3 has still not been completed. Mr. Plagman made certain the tasks were completed by the deadline. One of Mr. Plagman's subordinates had the day off on April 1, 2020. The employer was concerned that Mr. Plagman had not assigned someone else to empty the trash in the break room. In the past, Mr. Plagman's subordinates had taken care of the break room trash when the employee assigned to that task was gone and had done so without need for a specific directive from Mr. Plagman. When Mr. Plagman learned the trash was overflowing in the breakroom, he personally emptied the trash.

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).

The evidence in the record establishes a discharge for no disqualifying reason. The weight of the evidence does not support the employer's assertion that Mr. Plagman was less than straightforward regarding the line lube incident. The weight of the evidence establishes other legitimate employer concerns, along with Mr. Plagman's efforts to respond to those concerns. The weight of the evidence does not establish a willful and wanton disregard of the employer's interests or a pattern of carelessness and/or negligence indicating willful and wanton disregard.

Mr. Plagman is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The June 9, 2020, reference 01, decision is affirmed. The claimant was discharged on April 15, 2020 for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in dark ink on a light-colored background.

James E. Timberland
Administrative Law Judge

August 25, 2020
Decision Dated and Mailed

jet/scn