

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOSEPH D VANGORP
Claimant

SAC & FOX TRIBE
Employer

APPEAL NO. 21A-UI-02134-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/18/20
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 December 24, 2020, reference 01, decision that allowed benefits to the claimant provided the claimant 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 September 20, 2020 for no disqualifying reason. After due notice was issued, a hearing was held on March 26, 2021. Claimant, Joseph Vangorp, participated. Joshua Canterbury represented the employer and presented testimony through Jarrett Pfrimmer and Lawrence SpottedBird and Dan Campbell. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1 through 14 into evidence. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

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: The claimant was employed by Sac & Fox Tribe of the Mississippi in Iowa as the full-time Director of Hemp Operations from July 2019 until September 30, 2020, when the employer discharged him from the employment for alleged failure to follow or breach of Tribal policies and procedures. The claimant is a trained chemist. The claimant is not a trained horticulturalist or an attorney. The employer hired the claimant in conjunction with hiring a horticulturalist. The pair were to assist the employer with establishing a hemp production and processing enterprise. The employer subsequently terminated the horticulturalist and had the claimant absorb the horticulturalist duties. The work in question was subject to a complex amalgam of federal, state and tribal law. The claimant was involved in the discussion leading to enactment of the hemp production specific tribal law. The claimant was not expert in the applicable law and relied upon guidance from the employer's legal staff. Such guidance was not always available to the extent

necessary, which led to the claimant making errors in dealing with matters with legal and regulatory implications. During the claimant's employment, the employer underwent significant changes in leadership that significantly impacted continuity of direction, guidance, expectations, and communications. The claimant performed his duties in good faith and to the best of his ability, but ended up running afoul of the legal requirements for growing and harvesting hemp and causing the employer to run afoul of those same requirements. The employer concluded it could not legally harvest the maiden hemp crop and destroyed the crop at substantial loss to the employer. The employer, under its own laws, revoked the hemp production license the employer had issued to his hemp growing operation.

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 Iowa Admin. Code r.871 -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. Given the complex constellation of horticultural, regulatory, leadership, political and communication factors that had to align perfectly in order for the employer's maiden venture into hemp production and processing to be successful, it is not a surprise that things did not go as planned. The claimant made errors in judgment. The employer significantly contributed to things not going as planned. The evidence does not establish a willful and wanton disregard for the employer's interests. Accordingly, the claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The December 24, 2020, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.



James E. Timberland
Administrative Law Judge

July 8, 2021
Decision Dated and Mailed

jet/scn