

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRAVIS K CLARK
Claimant

APPEAL NO. 18A-UI-04399-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NEWBURY MANAGEMENT CO
Employer

OC: 03/18/18
Claimant: Appellant (2)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(8) – Current Act Requirement

STATEMENT OF THE CASE:

Travis Clark filed a timely appeal from the April 4, 2018, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on the Benefits Bureau deputy's conclusion that Mr. Clark was discharged on March 19, 2018, for loafing on the job. After due notice was issued, a hearing was held on May 3, 2018. Mr. Clark participated. Derrick Johnson, Risk Manager, represented the employer and presented additional testimony through Rick Young, Maintenance Supervisor. Exhibit A was received into evidence.

ISSUES:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

Whether the discharge was based on a current act.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Travis Clark was employed by Newbury Management Company as a full-time maintenance technician from February 2017 until March 19, 2018, when the business owners discharged Mr. Clark from the employment. Mr. Clark performed his work duties, a ten building complex that contained eight residential units. Mr. Clark's duties primarily involved getting vacated units ready for new tenants. Rick Young, Maintenance Supervisor, was Mr. Clark's supervisor. Mr. Young did not work at the complex. The complex property manager, Morgan Doerhoff, directed Mr. Clark's day-to-day activities. Mr. Clark was expected to be on-site during regular business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday. Mr. Young notified Mr. Clark of the discharge decision. At that time, Mr. Young told Mr. Clark that the company was restructuring and that Mr. Clark's employment was done. Mr. Young provided no other reason for the discharge.

The employer asserts that the discharge was based on Mr. Clark spending an excessive amount of time in the property manager's office and in Ms. Doerhoff's on-site apartment during work hours. Ms. Doerhoff separated from the employer one month before Mr. Clark was

discharged from the employment. The conduct the employer points to as the basis for Mr. Clark's March 19, 2018 discharge dates from at least one month prior to Mr. Clark's discharge from the employment and came to the employer's attention at least one month prior to the discharge. On the day Ms. Doerhoff separated from the employment, Mr. Young and his supervisor, Sharon Wolfe, District Manager, met with Mr. Clark. They asked Mr. Clark if he thought the maintenance duties at the complex provided full-time work. Mr. Clark replied that he thought the maintenance duties only provided about three days of work per week. Mr. Young and/or Ms. Wolfe then asked whether adding painting duties might make the duties add up to full-time work. Mr. Clark replied that he thought they would. At the time Mr. Young and Ms. Wolfe met with Mr. Clark, Ms. Wolfe told Mr. Clark that she had information indicating that Mr. Clark had been spending an excessive amount of time in the property manager's office. Neither Ms. Wolfe nor Mr. Young stated anything to Mr. Clark at that time to put him on notice that his employment was in jeopardy. About a week after this meeting, Mr. Young trained Mr. Clark to paint the units. The employer concedes there was no conduct on the part of Mr. Clark during the last month of the employment that factored in the discharge decision.

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 a discharge 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 that was not based on a current act. The employer asserts the discharge was based on alleged loitering that occurred at least a month prior to the discharge and that came to the employer’s attention a month prior to the discharge. The employer spoke with Mr. Clark about a month before the discharge and said nothing to put him on notice that his employment was in jeopardy. A month later, the employer notified Mr. Clark that he was discharged. Because the evidence establishes a discharge that was not based on a current act, the discharge does not disqualify Mr. Clark for unemployment insurance benefits. Because the discharge was not based on a current act, the administrative law judge need not further consider the conduct in question or whether it constituted misconduct. Mr. Clark is eligible for benefits, provided he is otherwise eligible. The employer’s account may be charged.

DECISION:

The April 4, 2018, reference 01, decision is reversed. The claimant’s March 19, 2018 discharge was not based on a current act. 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

Decision Dated and Mailed

jet/scn