

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TROY J GREINER
Claimant

APPEAL NO. 16A-UI-03489-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AGRI-INDUSTRIAL PLASTICS CO
Employer

OC: 02/21/16
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 March 10, 2016, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant had been discharged on February 26, 2016 for no disqualifying reason. After due notice was issued, a hearing was started on April 11, 2016 and concluded on April 18, 2016. Claimant Troy Greiner participated. Katie Nichols represented the employer and presented additional testimony through Rob Pettit. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits Two through Six into evidence.

ISSUE:

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

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Troy Greiner was employed by Agri-Industrial Plastics Company as a full-time set-up tech until February 26, 2016, when Rob Pettit, Director of Operations, discharged him from the employment based on Mr. Greiner's angry outbursts in the workplace. Mr. Greiner's work as a set-up tech setting up machines to manufacture custom molds. Mr. Greiner began his employment in 2002 as a machine operator and was a set-up tech for about the last couple years of the employment. Scott Roulet, Set-up Manager, was Mr. Greiner's immediate supervisor. Mr. Greiner's usual start time was 8:00 a.m. Mr. Greiner would finish his work day sometime between 4:30 and 6:00 p.m.

The final incident that triggered the discharge occurred at the start of Mr. Greiner's shift on February 25, 2016. At about 8:00 a.m. that morning, Rob Pettit, Director of Operations, heard Mr. Greiner yelling and observed Mr. Greiner kick a box. Mr. Pettit confronted Mr. Greiner about the conduct and told Mr. Greiner that it was the same sort of conduct that Mr. Pettit had warned

Mr. Greiner about several days earlier. On February 25, Mr. Greiner was upset because he would have to finish a parts run that was started by others during the preceding shift before he could get started on the parts run he wanted to complete. As Mr. Pettit addressed the matter with Mr. Greiner, Mr. Greiner told Mr. Pettit, "they had better get more people over here to help" and "this is bullshit." Set-up assistant Brandon Brinkmeyer was standing nearby and had been present for Mr. Greiner's outburst. Mr. Pettit told Mr. Greiner to gather his things and to go home and cool off. Mr. Greiner told Mr. Pettit, "Good luck finding someone to set-up" and complied with the employer's directed to go home for the day. After Mr. Greiner had left the area, Mr. Pettit apologized to Mr. Brinkmeyer for Mr. Greiner's conduct. Mr. Brinkmeyer told Mr. Pettit that he was used to it. The employer discharged Mr. Greiner the next day for violating the employer's conduct policy.

The next most recent incident that factored in the discharge occurred on February 11, 2016. On that day, Mr. Greiner and two other employees asked a couple foremen to provide someone to cover their machine operating duties so Mr. Greiner and the other employees could go on their lunch break. When the foreman did not provide a substitute, Mr. Greiner and the other employees decided to grind or destroy about 30 good parts the machine produced during their break times so that they could keep up with production. Mr. Greiner had a company phone that he could have used to contact a supervisor, rather than a foreman, to get someone to cover his workstation while he was away on lunch break, but elected not to contact a supervisor. The employer issued a reprimand to Mr. Greiner on February 12, regarding the parts that Mr. Greiner wasted on February 11. The employer communicated to Mr. Greiner on February 12 that his employment was in jeopardy.

In making the decision to discharge Mr. Greiner from the employment, the employer considered a comment that Mr. Greiner had uttered to a coworker within earshot of Mr. Roulet. Mr. Greiner was frustrated by a machine that was not working right and told the coworker that he hoped he would get fired. Mr. Roulet documented the incident and spoke to Mr. Greiner about it a couple days later.

In making the decision to discharge Mr. Greiner from the employment, the employer considered a disciplinary suspension from 2010.

Mr. Greiner established a claim for benefits that was deemed effective the week that started February 21, 2016 and received \$4,167.00 in benefits for the period of February 28, 2016 through April 30, 2016. On March 9, 2016, a Workforce Development claims deputy held a fact-finding interview to address Mr. Greiner's separation from the employment. Mr. Pettit represented the employer at the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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).

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 question of whether the use of improper language in the workplace is misconduct is nearly always a fact question. It must be considered with other relevant factors, including the context in which it is said, and the general work environment. See Myers v Employment Appeal Board, 462 N.W.2d 734, 738 (Iowa Ct. App. 1990).

Threats of violence in the workplace constitute misconduct that disqualifies a claimant for benefits. The employer need not wait until the employee acts upon the threat. See Henecke v. Iowa Dept. Of Job Services, 533 N.W.2d 573 (Iowa App. 1995).

Mr. Greiner's expression of frustration on February 25 involved inappropriate conduct that did not rise to the level of misconduct that would disqualify Mr. Greiner for unemployment insurance benefits. Mr. Greiner's utterance and kicking of the box that day did not involve any threat of violence. The profanity uttered was only mildly offensive in nature and was not an attack upon the authority of Mr. Pettit. Mr. Brinkmeyer understood the conduct for what it was, an inappropriate expression of frustration. The conduct on February 11 is somewhat more egregious in that good parts were wasted due to Mr. Greiner's self-defeating decision to get angry with a non-responsive foreman rather than take reasonable and appropriate steps to summon a supervisor. The utterance on January 27 was yet another expression of frustration. While the conduct in question was inappropriate neither the separation incidents nor the pattern rises to the level of willful and wanton disregard of the employer's interests. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Greiner was discharged for no disqualifying reason. Accordingly, Mr. Greiner is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The March 10, 2016, 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

Decision Dated and Mailed

jet/css