

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TYLER L MAGNANI
Claimant

APPEAL NO. 14A-UI-03409-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BROWN CUSTOMER DELIGHT GROUP INC
Employer

OC: 02/16/14
Claimant: Respondent (2)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct
Iowa Code Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 18, 2014, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged. After due notice was issued, a hearing was held on May 7, 2014. Claimant Tyler Magnani did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Diana Perry-Lehr of Employers Unity represented the employer and presented testimony through Stacey Hadfield, Chris Dils and Kelly Betts. The administrative law judge took official notice of the agency's record of benefits disbursed to the claimant and received Exhibits 1 through 16 into evidence. The administrative law judge took official notice of the fact-finding materials for the purpose of determining whether the employer participated in the fact-finding interview.

ISSUES:

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

Whether the claimant was overpaid benefits.

Whether the claimant must repay benefits.

Whether the employer's account may be charged for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Tyler Magnani was employed by Brown Customer Delight Group, Inc., d/b/a McDonald's, as a part-time crew member from April 2013 until December 19, 2013, when Chris Dils, Acting General Manager, discharged him from the employment. Ms. Dils had suspended Mr. Magnani on December 14. The final incident that triggered the suspension and discharge occurred on December 12, 2013, when Mr. Magnani refused to stay in his designated work area and made an insubordinate remark to the supervisor who directed him to stay in his work area.

Mr. Magnani told the supervisor that he was not his mom or his boss. In the course of investigating that incident, Ms. Dils learned on December 14, 2013, of another incident from Mr. Magnani's coworker that Mr. Magnani had been climbing in and out of a meat cooler three weeks earlier. Ms. Dils reviewed surveillance video from the shift in question and confirmed that Mr. Magnani had indeed engaged in the conduct. In making the decision to discharge Mr. Magnani from the employment, Ms. Dils also considered an incident from November 2, 2013, when Mr. Magnani "moonied" staff working in the grill area. That conduct was in response to a supervisor's directive that Mr. Magnani perform his assigned work before he left. Mr. Magnani dropped his pants and at the same time said, "Everybody can kiss it."

Mr. Magnani established a claim for benefits that was effective February 16, 2014 and received \$444.00 in benefits for the four-week period of February 16, 2014 through March 15, 2014. The employer participated in the fact-finding interview through Stacey Hadfield of Employers Unity, who provided an oral statement, and through documentation that included Exhibits 2 through 16.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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).

Continued failure to follow reasonable instructions constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See Woods v. Iowa Department of Job Service, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See Endicott v. Iowa Department of Job Service, 367 N.W.2d 300 (Iowa Ct. App. 1985).

The evidence in the record establishes misconduct in connection with the employment. The evidence establishes insubordination based on the December 12 incident and the November mooning incident. The supervisors reasonably expected Mr. Magnani to perform assigned work and to stay at his assigned work station and issued reasonable directives to him. Mr. Magnani responded unreasonably and inappropriately. In the final instance, Mr. Magnani told the supervisor she was not his mother. In the earlier instance, Mr. Magnani “mooned” staff and told them they could kiss his rear. The evidence establishes misconduct over and above the insubordination. Mr. Magnani's decision to bare his rear in the kitchen area and his decision to climb in to a work cooler were not only immature but highly unsanitary. The conduct, especially in the context of a restaurant environment, demonstrated a willful and wanton disregard of the employer's interests.

Because the evidence establishes a discharge for misconduct, Mr. Magnani is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the

employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid \$444.00 in benefits for the four-week period of February 16, 2014 through March 15, 2014. Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

DECISION:

The claims deputy's March 18, 2014, reference 01, decision is reversed. The claimant was discharged for misconduct. 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 allowance, provided he meets all other eligibility requirements. The claimant was overpaid \$444.00 in benefits for the four-week period of February 16, 2014 through March 15, 2014. The claimant is required to repay the overpayment. The employer's account will not be charged for benefits paid.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs