

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN J CREEKMORE
Claimant

APPEAL NO. 08A-UI-08192-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**ELECTROLUX HOME PRODUCTS INC
FRIGIDAIRE**
Employer

**OC: 01/06/08 R: 01
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

Electrolux Home Products, Inc., Frigidaire, filed a timely appeal from the September 4, 2008, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on September 29, 2008. The claimant did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. April Ely, Human Resources Generalist, represented the employer. Exhibits One through Six were received into evidence.

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: John Creekmore was employed by Electrolux Home Products, Inc., Frigidaire, from May 4, 2007 until August 1, 2008, when the employer discharged him for unsatisfactory work performance. Mr. Creekmore's immediate supervisor was Justin Kennedy, Facilitator. The decision to discharge Mr. Creekmore was made by Mr. Kennedy, Area Manager Matt Carlson and Labor Relations Manager LaVonne Russell.

The final conduct that prompted the discharge occurred on July 30, 2008, when Mr. Creekmore was not performing to the satisfaction of the employer. On June 30, 2008, Mr. Kennedy reprimanded Mr. Creekmore for alleged insubordination. On July 8, 2008, Ms. Russell reprimanded Mr. Creekmore for leaving his work area for a non-emergency without permission. On July 8, Ms. Russell reprimanded Mr. Creekmore for alleged insubordination. On July 18, 2008, Mr. Kennedy reprimanded Mr. Creekmore for unsatisfactory performance. The employer witness does not know the details of the conduct that prompted the above disciplinary matters. Ms. Russell and Mr. Kennedy are still with the employer, but did not testify.

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.

871 IAC 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.

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).

The employer has failed to produce sufficient evidence to establish misconduct in connection with the July 30 incident or in connection with any of the prior incidents that prompted disciplinary action. The employer produced no testimony from persons with first-hand knowledge of the events in question. Mere failure to perform to the satisfaction of the employer does not constitute misconduct.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Creekmore was discharged for no disqualifying reason. Accordingly, Mr. Creekmore is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Creekmore.

DECISION:

The Agency representative's September 4, 2008, reference 02, 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/pjs