

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICH BANKS
Claimant

APPEAL NO. 07A-UI-00451-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTRAL STATES COOP
Employer

**OC: 04/16/06 R: 01
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

Central States Coop filed a timely appeal from the January 4, 2007 reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on January 30, 2007. Claimant Rich Banks participated. Deb Ladehoff, Vice President, represented the employer. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant.

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: Rich Banks was employed by Central States Coop as a full-time truck driver from November 16, 2006 until December 5, 2006, when Vice President Deb Ladehoff discharged him. Mr. Banks' immediate supervisor was Dispatcher Roger Bohlholz. Mr. Banks hauled grain for the employer.

The final incident that prompted the discharge occurred on December 5, 2006 at a grain coop in Aurora, Nebraska. Mr. Banks had been backing his tractor-trailer unit onto a scale when the passenger side of the tractor brushed against a yellow post. An air filter on the tractor obstructed Mr. Banks' line of sight to the post as he backed the tractor. The post was one of several along the scale drive, there to guide drivers as they backed onto the scale. Mr. Banks was immediately aware that he had come in contact with the post. Mr. Banks exited his truck to examine the truck and the post. The damage to the tractor consisted of a yellow paint mark and a small dent. Before Mr. Banks left the coop, he advised the coop that he had made contact with the yellow post and that he would report the matter to his employer. Mr. Banks notified Dispatcher Roger Bohlholz of the incident. Mr. Bohlholz indicated that he was going to advise his superiors of the incident. Mr. Banks arrived back at the workplace at 8:00 p.m. and discovered a note on his personal vehicle, directing him to call Vice President Deb Ladehoff. When Mr. Banks contacted Ms. Ladehoff, the employer indicated that he was discharged from

the employment and that the employer did not need a driver that was out wrecking its truck. The employer did not believe that Mr. Banks possessed the requisite skills to operate his assigned tractor-trailer unit. Mr. Banks possessed the proper license to operate the tractor-trailer unit, but had not previously operated a grain truck. The employer had not reviewed the damage to the truck or conducted any investigation of the incident prior to discharging Mr. Banks.

Earlier in the day on December 5, Mr. Banks had noticed a torn mud flap on the trailer of the truck he operated. Mr. Banks promptly reported that matter to Mr. Bohlholz, prior to the incident with the yellow post. Mr. Banks was not aware of anything that might have happened to cause damage to the mud flap. Mr. Banks had started his workday at 5:00 a.m. and had conducted a vehicle inspection at that time. However, it had been dark at the time and Mr. Banks had not observed the mud flap.

On November 30, Mr. Banks had been driving into a grain elevator when he felt a bump. Mr. Banks did not think much about it at the time. A short while later, Mr. Banks was waiting to load grain and conducted a vehicle inspection. At that time, Mr. Banks noticed that a corner of the bumper on the tractor was bent in half an inch. Another driver, Clark Freeman, noticed Mr. Banks examining the bumper. Mr. Freeman told Mr. Banks that he had notified the employer that Mr. Banks had an accident with the truck. Mr. Freeman advised Mr. Banks that he should report the matter to the employer. Mr. Banks believed the damage to the bumper was minor and easily fixed. Mr. Banks used a piece of lumber to pull the bumper out to its proper position. Based on Mr. Freeman's prior report to the employer and the fact that the damage was minimal and easily fixed, Mr. Banks did not make any further report to the employer. Mr. Banks attended the employer's Christmas party the next day and continued to report to work. Until the discussion during which Ms. Ladehoff discharged Mr. Banks from the employment, the employer had not further discussed the November 30 incident with Mr. Banks.

The employer has a written policy that requires drivers to immediately report accidents to the employer. In addition, the employer has a policy that a driver will be discharged if he has two accidents.

Mr. Buchholz and Mr. Freeman are still in the employer's employ, but did not testify at the hearing.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Banks was discharged for misconduct in connection with the employment that disqualifies him for unemployment insurance benefits. It does not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 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).

The evidence in the record establishes that Mr. Banks has a minor accident at the Aurora, Nebraska Coop and that he properly reported the incident to the employer. The evidence indicates that the employer conducted no investigation of the matter prior to discharging Mr. Banks. The evidence in the record does not indicate that Mr. Banks engaged in willful or wanton disregard of the employer's interests in connection with the December 5 accident. In addition, the evidence does not establish that Mr. Banks was negligent or careless in connection

with the December 5 incident. The evidence indicates there was but one accident on December 5. The evidence indicates a second, prior accident on November 30. The evidence does not indicate that the damage to the bumper resulted from willful or wanton disregard of the employer's interests or carelessness/negligence on the part of Mr. Banks. The evidence does indicate that Mr. Banks was negligent in failing to report the bumper damage to the employer. The evidence does not indicate recurrent negligence and/or carelessness that would indicate a willful or wanton disregard of the interests of the employer. Instead, the evidence indicates limited skill, which would not be misconduct.

While the decision to discharge Mr. Banks was within the discretion of the employer, the administrative law judge concludes that Mr. Banks was not discharged for misconduct that would disqualify him for unemployment insurance benefits. Accordingly, Mr. Banks is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Banks.

DECISION:

The Agency representative's January 4, 2007 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/pjs