

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON W MCCLANAHAN
Claimant

APPEAL NO. 12A-UI-04777-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC
Employer

OC: 03/11/12
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Jason McClanahan filed a timely appeal from the April 17, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 15, 2012. Mr. McClanahan participated. Nikki Bruno, Human Resources Supervisor, represented the employer.

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: Jason McClanahan was employed by West Liberty Foods as a full-time, third-shift, set-up team member from 2010 until March 9, 2012, when Nikki Bruno, Human Resources Supervisor, discharged him from the employment for repeated negligence in the performance of pre-operations inspections. Mr. McClanahan's duties included inspecting areas of the production facility after they had been cleaned by others and before the U.S.D.A. Inspector inspected the same areas. Mr. McClanahan would have to document or sign-off that he had inspected the areas and found them to be clean and sanitary. Mr. McClanahan received appropriate training to perform the work. Mr. McClanahan received retraining on February 5, 2012. The purpose of the pre-op inspection was to ensure safe and sanitary production conditions. Mr. McClanahan had performed the same duties throughout the employment.

The incidents that triggered the discharge were back-to-back negligent inspections on March 7 and 8. In both instances, Mr. McClanahan signed off that production areas were clean and sanitary when it was readily apparent, upon performance of a proper inspection, that they were neither clean nor sanitary. These final two instances followed a reprimand, suspension and retraining at the beginning of February 2012. On January 19, 2012, Mr. McClanahan had again signed off on an area being clean and sanitary when, upon proper inspection, it was readily apparent that the area was neither clean nor sanitary.

While the third shift set-up crew was running short-staffed, the employer did not expect or encourage Mr. McClanahan to take shortcuts in performing the pre-op inspections. The employer made first shift employees available to assist with the pre-op inspections if not all areas had been inspected at the beginning of the first shift.

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 weight of the evidence in the record establishes at least three similar incidents of similar negligence within a relatively short period. The weight of the evidence fails to support the claimant's assertion that he was negligent in performing his duties due to staffing issues or due to not being properly trained. The evidence indicates instead that the claimant simply failed to perform his assigned duties in a conscientious manner and instead either failed to perform inspections or did cursory inspections. There is sufficient evidence to establish a pattern of negligence indicating a 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. McClanahan was discharged for misconduct. Accordingly, Mr. McClanahan 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 employer's account shall not be charged for benefits paid to Mr. McClanahan.

DECISION:

The Agency representative's April 17, 2012, reference 01, decision is affirmed. 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 employer's account will not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs