

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**LORENZO CHAMERO**  
Claimant

**TPI IOWA LLC**  
Employer

**APPEAL NO. 20A-UI-03757-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/22/20**  
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the April 29, 2020, reference 01, decision that allowed benefits to the claimant provided he met all other eligibility requirements and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on March 24, 2020 for no disqualifying reason. After due notice was issued, a hearing was held on May 26, 2020. Claimant Lorenzo Chamero did not provide a telephone number for the appeal hearing and did not participate. Danielle Williams, Senior Human Resources Coordinator, represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibit 1 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: Lorenzo Chamero was employed by TPI Iowa, L.L.C. as a full-time Team Leader for the Molding Department until March 25, 2020, when the employer discharged him from the employment. Mr. Chamero began his employment in 2017. Mr. Chamero was assigned to the second shift and his work hours were 3:00 p.m. to 11:00 p.m., Monday through Friday. Lisa Floyd, Production Leader, was Mr. Chamero's supervisor. Mr. Chamero is a Spanish-Speaking person. Mr. Chamero may or may not also speak English. Mr. Chamero's duties included supervising and training the 12 people on his team to ensure that production molds were properly filled with resin. The employer witness is not familiar with Mr. Chamero and has no personal knowledge of the incident that triggered the discharge or earlier incidents that factored in the discharge. The incident that triggered the suspension and discharge occurred on March 25, 2020. The employer alleges that Mr. Chamero ignored his work duties while he spoke on his phone, resulting in a mold not being filled with resin pursuant to the protocol.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)(a) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

The evidence in the record establishes a discharge for no disqualifying reason. The employer presented insufficient evidence, and insufficiently direct and satisfactory evidence, to meet its burden of proving a discharge based on misconduct in connection with the employment. The employer's sole witness lacked personal knowledge of the matters in question. The employer elected not to present testimony from anyone with personal knowledge of the final incident or of earlier matters that factored in the discharge. The employer's sole evidence regarding the offending conduct was an emailed summary sent between human resources representatives on March 25, 2020. The claimant is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits.

**DECISION:**

The April 29, 2020, reference 01, decision is affirmed. The claimant was discharged on March 25, 2020 for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.



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James E. Timberland  
Administrative Law Judge

June 30, 2020  
Decision Dated and Mailed

jet/scn