

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY A LITTLE
Claimant

APPEAL NO. 08A-UI-08925-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOLT PLUMBING & HEATING INC
Employer

OC: 02/10/08 R: 02
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

Employer filed a timely appeal from the September 24, 2008, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on October 20, 2008. Claimant participated. Lynn Holt, President, represented the employer and presented additional testimony through Frank Fees.

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: Timothy Little was employed by Holt Plumbing & Heating as a full-time licensed journeyman plumber from June 16, 2008 until July 22, 2008, when Lynn Holt, President, discharged him. Mr. Holt functioned as Mr. Little's immediate supervisor. Mr. Holt assigned Mr. Little to act as lead plumber on a commercial building project in Indianola. Mr. Little was responsible for laying out the plumbing rough-in according to the blue prints before the concrete slab was poured. Mr. Little was assisted by two apprentices. Mr. Little took what he thought were appropriate measurements and laid out what he thought were the appropriate lines and connections. The apprentices followed behind and actually put the pieces together. When Mr. Holt stopped at the site to review Mr. Little's work, Mr. Holt and an assistant took measurements and concluded that much of the plumbing layout Mr. Little had performed was incorrectly placed. A significant portion of the layout had to be redone. The employer thought that Mr. Little had been careless and/or negligent in performing his assigned duties. The employer subsequently sent Mr. Little to work on other assignments, which Mr. Little completed satisfactorily.

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 establishes that Mr. Little was in fact careless in performing his measuring duties on the Indianola job site. However, the evidence indicates that the negligence

was isolated to this one task at this one job site. The evidence fails to establish recurrent careless and/or negligence. Accordingly, the evidence fails to establish misconduct in connection with the employment that would disqualify Mr. Little for unemployment insurance benefits. Mr. Little is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Little.

DECISION:

The Agency representative's September 24, 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/css