

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

ERIK MAGANA
Claimant

APPEAL NO. 18A-UI-07850-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE HILLSHIRE BRANDS COMPANY
Employer

OC: 06/24/18
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 12, 2018, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on the Benefits Bureau deputy's conclusion that the claimant was discharged on June 26, 2018 for no disqualifying reason. After due notice was issued, a hearing was held on August 10, 2018. Claimant Erik Magana participated. Tim Steffen represented the employer and presented additional testimony through Mark Green. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1 through 4 into evidence.

ISSUES:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Erik Magana was employed by The Hillshire Brands Company as a full-time feed mill driver from 2016 until June 26, 2018, when the employer discharged him for alleged theft from a coworker. On June 18, 2018, Mr. Magana removed a blue bag with a Tyson logo from atop the employee break room refrigerator and took the bag home. The employer had previously distributed the inexpensive bags to employees. Mr. Magana had previously left his Tyson bag in the workplace. After seeing the particular bag atop the fridge for several days in a row, Mr. Magana concluded the bag was his. Mr. Magana took the bag home and hung it on a coat hook by his front door. Mr. Magana did not open the bag or review the contents of the bag. The bag that Mr. Magana took from atop the refrigerator actually belonged to new employee Mark Green. A few days after the bag went missing, Mr. Green and another employee, Dominick Amendolare, reviewed surveillance video and saw Mr. Magana enter the workplace without a bag and leave with the Tyson bag on June 18.

On June 25, Mr. Amendolare brought the matter to the attention of Tim Steffen, Human Resources Manager. Mr. Steffen reviewed the surveillance video that showed Mr. Magana

leaving with the bag on June 18. On June 25, the employer spoke with Mr. Magana and asked if Mr. Magana had taken the bag. Mr. Magana readily admitted that he had taken the bag. Mr. Magana added that he had previously misplaced an identical bag at work, that he had thought the bag was his, that his wife had asked him about the missing bag, and that he had taken the bag home. Mr. Magana apologized for his error and asked whether he could make it up to Mr. Green by buying him a meal. Mr. Magana completed a written statement. Mr. Magana then went home, retrieved the bag from where he had hung it on a coat hook, and returned it to his acting supervisor, Tim Doyle. Mr. Doyle opened and reviewed the contents of the bag. The bag included a phone charging cord that Mr. Doyle moved from one compartment to another. After Mr. Green received the bag back into his possession, he asserted that some cookies were missing from the bag.

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 Iowa Administrative Code rule 871-24.32(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 Iowa Administrative Code rule 871-24.32(4).

The weight of the evidence in the record establishes a discharge for no disqualifying reason. The weight of the evidence establishes that Mr. Magana mistakenly thought that Mr. Green's Tyson bag atop the fridge in the break room was an identical bag that Mr. Magana had recently misplaced at the workplace. The evidence establishes that Mr. Magana was careless in assuming the bag was his and in removing the bag from the workplace without first asking around to see whether the bag belonged to a coworker. The evidence establishes that the carelessness was an isolated incident and not part of a pattern. The evidence fails to establish any intent on the part of Mr. Magana to steal the bag. The evidence fails to establish that Mr. Magana tampered with, moved, or stole the contents of the bag. When the employer brought the error to Mr. Magana's attention, Mr. Magana acted in good faith to promptly restore the item to Mr. Green and to offer to compensate Mr. Magana for the inconvenience. While the employer elected to apply its work rules in a mechanical manner to separate Mr. Magana from his employment, it would be both error and a miscarriage of justice for the administrative law judge to replicate that decision making process by assigning to Mr. Magana an intent to commit theft when the evidence indicates no such intent existed. Mr. Magana is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The July 12, 2018, reference 01, decision is affirmed. The claimant was discharged on June 26, 2018 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/rvs