

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MEDGAR HARRIS
Claimant

APPEAL NO. 09A-UI-09229-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE HON COMPANY
Employer

OC: 05/10/09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated June 19, 2009, reference 01, which denied benefits based upon his separation from The Hon Company. After due notice, a telephone conference hearing was scheduled for and held on July 14, 2009. The claimant participated personally. The employer participated by Mr. Kenny Johnson, Representative and witness, Nathan Youngblood, Human Resource Generalist.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Medgar Harris was employed by The Hon Company from August 2007 until October 24, 2008 when he was discharged from employment. Mr. Harris held the position of full-time enc machine programmer/operator and was paid by the hour. His immediate supervisor was Eric Kromer.

The claimant was discharged for unsatisfactory work performance. Mr. Harris was discharged after he was unable to observe excess laminate that had been allowed to remain on outside portions of some parts being produced in the claimant's work area. Although Mr. Harris attempted to inspect the parts as required, the claimant could not observe the parts in question due to the manner in which they had been stacked making portions of the lower parts unobservable. Mr. Harris did not notice the laminate on one part at the bottom of the stack as he had been unable to move other parts to observe the final part.

Prior to being discharged the claimant had received a warning for attendance and one warning for the quality of his work due to "overall" issues involving Mr. Harris' employment. A management decision was made to terminate him from employment based upon the October 22, 2008 incident.

REASONING AND CONCLUSIONS OF LAW:

The issue before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is 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.

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 denial of unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant the denial of unemployment insurance 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 a current act of misconduct, a discharge for misconduct cannot be based upon such past acts. The termination of employment must be based upon a current act. See 871 IAC 24.32(8).

Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling or unable 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 establishes that the claimant was discharged because he was unable to properly inspect a machined part that had been previously stacked in such a manner so as to obscure a portion of the part making it unobservable to the claimant. The claimant attempted to the best of his ability to inspect the parts as required, but was unable to sufficiently complete the inspection process due to factors beyond his control. The claimant was unable to move the heavy parts and did not have assistance.

The question is not whether the employer has a right to discharge an employee for this reason but whether the discharge is disqualifying under the provisions of the Iowa Employment Security Act. While the decision to terminate Mr. Harris may have been a sound decision from a management viewpoint, intentional misconduct sufficient to warrant the denial of unemployment insurance benefits has not been shown. Benefits are allowed providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated June 19, 2009, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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