

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHANE R HALLING
Claimant

APPEAL NO. 13A-UI-09186-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALLSTEEL INC
Employer

OC: 07/14/13
Claimant: Respondent (2-R)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 1, 2013, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on September 13, 2013. Claimant Shane Halling participated. Sandra Linsin of Employer's Edge represented the employer and presented testimony through Emily Bennett, Chris Marsiglio and Taylor Steffen. Exhibits One through Five were received 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: Shane Halling was employed by Allsteel, Inc., as a full-time welder from 2010 until July 12, 2013, when the employer discharged him for urinating in the parking lot of the production facility. The incident that triggered the discharge occurred on July 8, 2013 at the end of Mr. Halling's shift. Mr. Halling and other employees had made their way outside of the production facility. Production Supervisor Chris Marsiglio was working that evening and observed Mr. Halling urinating in the vicinity of a tree. The employer had restroom facilities just inside that door Mr. Halling had used to exit the production facility. Though Mr. Halling had his back to Mr. Marsiglio, his posture and movements all indicated that he was in fact urinating. When Mr. Marsiglio confronted Mr. Halling about the conduct, Mr. Halling initially ignored Mr. Marsiglio. When Mr. Marsiglio asked Mr. Halling's name and department, Mr. Halling initially told Mr. Marsiglio that he did not have to provide such information. Mr. Halling said nothing about having vomited or having dry heaves. Mr. Halling subsequently provided his first name and Mr. Marsiglio was able to use that information to determine his department and supervisor.

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) alone. 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 evidence in the record establishes Mr. Halling did indeed urinate in the vicinity of the employer's parking lot and did so in plain sight of one or more Allsteel personnel. The conduct was in willful and wanton disregard of the employer's interests and may well have been a public offense.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Halling was discharged for misconduct. Accordingly, Mr. Halling 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.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The matter of deciding the amount of the overpayment and whether the amount overpaid should be recovered from the claimant and charged to the employer under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The Agency representative's August 1, 2013, reference 01, decision is reversed. 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.

This matter is remanded to the Claims Division for initial adjudication of the overpayment issue.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css