

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAUN D BRUNT
Claimant

APPEAL NO. 14A-UI-05702-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**VERMEER MANUFACTURING COMPANY
INC**
Employer

**OC: 05/04/14
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 30, 2014, (reference 02) unemployment insurance decision that denied benefits. After due notice was issued a hearing was held on June 25, 2014. The claimant did participate and was represented by Nate Willems, attorney at law. The employer did participate through Amber Reagan, Human Resources Business Partner and represented by Espanol F. Cartmill, attorney at law. Employer's Exhibits A through H were entered and received into the record.

ISSUE:

Was the claimant discharged due to job connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a welder beginning on February 20, 2012 through May 8, 2014 when he was discharged. The employer discharged the claimant for alleged falsification of his medical history. After the claimant was offered a position, he was sent for a medical evaluation and screening. The information he provided on February 13, 2012 is found at Employer's Exhibit A, pages 1 and 3. The employer alleges the claimant did not disclose a prior significant injury to his left shoulder.

On March or around March 19 the claimant suffered an incident at work when he readied up while using a welding hoist and felt a pop in his left shoulder. He sought and received treatment from the onsite health services. The claimant initially reported the incident as a work-related injury. The claimant gave the medical provider a history of a prior injury to his left clavicle due to a bicycle accident some ten years prior. By late March 2014 both Ron Stanhope and Barb Hunt the head of human resources had reason to believe that the claimant was not truthful during his February 2012 medical reporting. On March 25 the claimant made it clear to the employer that he was not going to claim that the incident on March 19 was a work-related injury. Because the

claimant withdrew his claim that he had sustained a work-related injury, the employer decided to take no further action regarding his alleged falsification of information during his medical examination. The employer broke no law or internal policy in obtaining the claimant's medical information, as he had a workers' compensation claim pending at the time.

On April 28 the claimant sustained another work related incident to his shoulder and filed and followed through with a workers' compensation claim. At that time the employer brought him in on May 7 to inquire about the information he had provided to the medical examiner back in February 2012. The claimant denied falsification. The employer discharged him on May 12, for information they had known about since at the latest March 25, 2014. At hearing the employer admitted that in hindsight they should have acted on the knowledge they had back in March rather than waiting for the claimant to sustain another injury and file another workers' compensation claim.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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.

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).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) Past acts of misconduct. 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 on such past act or acts. The termination of employment must be based on a current act.

871 IAC 24.32(8) provides: Past acts of misconduct. 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 act or acts. The termination of employment must be based upon a current act. A lapse of 11 days from the final act until discharge when claimant was notified on the fourth day that his conduct was grounds for dismissal did not make the final act a "past act." *Greene v. EAB*, 426 N.W.2d 659 (Iowa 1988).

The employer had knowledge that the claimant had provided false information to the medical evaluation as late as March 25. They chose not to act on the information. The employer waited six weeks to take action on what they believed to be falsification of documents to the employer. Once the employer has knowledge of the alleged misconduct, they must act within a reasonable time. The employer legitimately came to believe that claimant had falsified the medical information when he sought medical treatment on March 25 at the latest. The employer's decision to take no action at that time, but instead to wait until the claimant filed another workers' compensation claim persuades the administrative law judge that the claimant was not discharged for a current act of misconduct. The employer did not act within a reasonable amount of time. As the employer has not established a current or final act of misconduct, benefits must be allowed.

DECISION:

The May 30, 2014 (reference 02) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs