

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT D PETTIT
Claimant

APPEAL NO. 16A-UI-11273-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON PET PRODUCTS INC
Employer

OC: 09/18/16
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Robert Pettit filed a timely appeal from the October 7, 2016, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on an agency conclusion that Mr. Pettit was discharged on September 14, 2016 for misconduct in connection with the employment. After due notice was issued, a hearing was held on November 2, 2016. Mr. Pettit participated. Dakota Cunningham, Human Resources Administrator and Benefits Counselor, represented the employer.

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: Robert Pettit was employed by Tyson Pet Products, Inc., as a full-time laborer in the Show Case department from 2014 until September 14, 2016, when Wes Gableman, First Shift Plant Superintendent, suspended him from the employment. Brooks Salgar, Human Resources Manager, subsequently discharged Mr. Pettit from the employment on September 19, 2016. The sole basis for the suspension and discharge was a documentation error that Mr. Pettit made during his shift on September 13, 2016. Mr. Pettit's duties included checking out tools to employees and check in tools from employees. During the shift on September 13, Mr. Pettit erroneously initialed a tool log to indicate that a particular meat thermometer had been turned in when the thermometer had not been turned in. The error came to the employer's attention when the employee in possession of the thermometer reported the next morning that she had forgotten to turn in the thermometer. The employer deemed missing tools to be a food safety concern. The employer's establish work rules prohibited falsification of company documents. Mr. Pettit's documentation that the tool had been turned in had been an unintentional mistake, not an intentional falsification of company records.

REASONING AND CONCLUSIONS OF LAW:

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).

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 evidence in the record fails to establish misconduct in connection with the employment. The administrative law judge notes that the employer elected not to present testimony from anyone with personal knowledge of the incident that led to the suspension and discharge. The employer had the ability to present such testimony. The employer presented insufficient evidence to rebut Mr. Pettit's candid and credible testimony that the documentation issue was an honest mistake. The employer presented insufficient evidence, and insufficiently direct and satisfactory evidence, to prove by a preponderance of the evidence that Mr. Pettit intentionally falsified the tool log.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Pettit was discharged for no disqualifying reason. Accordingly, Mr. Pettit is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Pettit.

DECISION:

The October 7, 2016, reference 01, decision is reversed. The claimant was suspended on September 14, 2016 and discharged on September 19, 2016 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