

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DAVID STEVENS
Claimant

APPEAL NO. 19A-UI-08932-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALTER TRADING CORPORATION
Employer

OC: 10/20/19
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

David Stevens filed a timely appeal from the November 7, 2019, reference 01, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Mr. Stevens was discharged on October 14, 2019 for violation of a known company rule. After due notice was issued, a hearing was held on February 6, 2020. Mr. Stevens participated and presented additional testimony through Aaron Scott. Tim Speir of Unemployment Insurance Services represented the employer and presented testimony through Sue Myers, Kevin Chambers, and Nicole Clarkson. Exhibits 4, 15, 16, 18, 19 20, 22, 40, 44, 46, B and C 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: David Stevens was employed by Alter Trading Corporation as a full-time commercial truck driver from 2016 until October 14, 2019, when the employer discharged him from the employment for repeated safety violations. The employer had reviewed the safety protocol and safety policies with Mr. Stevens at the start of the employment. Mr. Stevens was at all relevant times aware of the safety protocol and policies and was capable of following both.

The final conduct that triggered the discharge occurred on October 3, 2019. On that day Mr. Stevens left a 20-foot refuse "box" hanging approximately 10 feet over the edge of a customer's dock, which created a risk of serious injury and/or property damage in the event the box slid off the dock. The customer promptly contacted Nicole Clarkson, Yard Manager, to complain about the situation. The customer provided Ms. Clarkson with a photograph of the unsafe placement of the refuse box. When Mr. Stevens returned to the employer's facility, Ms. Clarkson and Mr. Chambers questioned Mr. Stevens about the refuse box delivery. Mr. Stevens told Ms. Clarkson and Mr. Chambers that he had been unable to push the box all the way back on the dock due to "stuff" behind the box.

When the employer met with Mr. Stevens on October 7, 2019 to discuss the matter, Mr. Stevens at that time asserted that he had delivered the roll-off box per the regular protocol and had pushed the box all the way back on the dock.

The final incident and the employer's decision to discharge Mr. Stevens from the employment followed prior safety concerns and associated reprimands.

On May 9, 2019, the employer issued a written reprimand to Mr. Stevens after a May 8, 2019 incident wherein Mr. Stevens disconnected the lift alarm of his company truck without authorization.

On May 22, 2019, the employer issued a written reprimand to Mr. Stevens after a May 17, 2019 incident wherein Mr. Stevens caused damage to a tire and fender of his assigned truck by attempting to pull the fender away from the tire with a chain. Mr. Stevens then caused damage to the bumper of his assigned trailer by backing into a roll-off refuse box in attempt to straighten the roll-off box.

On August 22, 2019, the employer issued a written reprimand and three-day suspension to Mr. Stevens after an August 9, 2019 incident wherein Mr. Stevens failed to wear proper safety equipment while performing work at a customer's facility. Mr. Stevens was aware that he was required to wear a hard hat, safety glasses, and long sleeves while performing work at the customer's facility.

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 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).

The weight of the evidence in the record establishes a discharge for misconduct in connection with the employment. The weight of the evidence establishes that Mr. Stevens knew how to safely perform his work duties, was capable of performing his work duties in a safe manner, but elected on multiple occasions during the last five months of the employment to perform his work duties in an unsafe manner. The pattern of unsafe conduct during the last five months of the employment was sufficient to demonstrate an intentional and substantial disregard of the employer's interests. Mr. Stevens is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. Mr. Stevens must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The November 7, 2019, reference 01, decision is affirmed. The claimant was discharged on October 14, 2019 for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn