

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN M PATCHIN
Claimant

APPEAL NO. 14A-UI-10988-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRUCE LAMMERS INC
Employer

**OC: 09/21/14
Claimant: Respondent (1)**

Iowa Code Section 96.5(2) – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 9, 2014, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible based on an Agency conclusion that the claimant was discharged for no disqualifying reason on September 10, 2014. After due notice was issued, a hearing was held on November 12, 2014. Claimant John Patchin participated personally and was represented by attorney, Heather Carlson. Bruce Lammers represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 14A-UI-10989-JTT. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant. Exhibits One through Eleven and A were received into evidence.

ISSUE:

Whether Mr. Patchin separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Bruce Lammers, Inc., doing business as White Front Feed & Seed, sells agricultural seed and fertilizer. John Patchin was employed as a full-time general laborer from September 2013 and last performed work for the employer on September 11, 2014. The employer's busy periods coincide with spring planting and fall harvest. During those times, the employer expects employees to work extended hours. Outside the busy periods, Mr. Patchin's regular work hours were 8:00 a.m. to 4:30 p.m., Monday through Friday. Mr. Patchin's duties included truck driving, mechanical repairs, and loading and unloading trucks. Mr. Patchin's immediate supervisor was Ron Haas.

In February 2014, Mr. Patchin suffered serious injury in a workplace accident when his lower left leg was crushed by a forklift operated coworker Dale Richardson. The injury required surgery and time away from work. Mr. Patchin continued to have issues with his leg through the end of the employment. At the end of July 2014, Mr. Patchin was released by a doctor to perform his full duties, but no more than six hours per day. Mr. Haas was in the habit of sending

Mr. Patchin home early if Mr. Patchin was not needed in the workplace. On August 15, 2014, Mr. Patchin was instructed by a doctor to begin wearing a compression stocking and this helped with Mr. Patchin's pain issues. Mr. Haas continued to send Mr. Patchin home early. The employer wanted Mr. Patchin to be as healed as possible when the fall busy season started.

In connection with Mr. Patchin's return to work after his injury and his continued work for the employer through September 11, 2014, Mr. Patchin had interpersonal conflicts with one or more coworkers. One of the coworkers involved in the conflict with Mr. Patchin was Mr. Richardson, the coworker who had operated the forklift in February at that time Mr. Patchin was injured. Mr. Richardson berated Mr. Patchin based on Mr. Patchin's injury and ongoing issues with his leg. Mr. Richardson called Mr. Patchin "gimpy." Mr. Richardson asked Mr. Patchin whether Mr. Patchin was "going to be a bitch" about his leg.

On September 11, Mr. Haas approached Mr. Patchin in the workplace and asked Mr. Patchin whether he and his attorney would be willing to look into obtaining disability benefits for Mr. Patchin. Mr. Patchin retained legal counsel to assist him in addressing the workplace injury issue. Mr. Haas told Mr. Patchin that the employer was thinking of letting him go due to issues related to his ability to perform his work duties. On that same day, Bruce Lammers, Owner, and Mr. Lammers' daughter, Teresa Coons, met with Mr. Patchin and told him that they wanted him to undergo a mental health evaluation due to the ongoing issues with his leg and interpersonal conflict in the workplace. Ms. Coons related to Mr. Patchin that she and her husband had issues with anxiety and were medicated for those issues. Ms. Coons' implied assertion was that Mr. Patchin was in need of psychotropic medication. Mr. Patchin was not in need of mental health evaluation or treatment. The employer suspended Mr. Patchin and conditioned his return to the employment on him submitting to a mental health evaluation. After the suspension was implemented, Mr. Patchin contacted Ms. Coons to request to return to work. Mr. Patchin asserted that the evaluation was unnecessary. Ms. Coons told Mr. Patchin he could not return to work until he underwent the evaluation. The employer scheduled a mental health evaluation for Mr. Patchin on September 30, 2014. The employer expected Mr. Patchin to bear the expense of the evaluation.

On September 26, 2014, Mr. Patchin's attorney sent a letter to the employer indicating that Mr. Patchin would submit to the evaluation, but that since it was the employer who wanted the evaluation, she and Mr. Patchin would expect the employer to bear the cost of the evaluation. Mr. Lammers was spooked by the contact from the attorney and became concerned that he might be opening himself up expense beyond the mental health evaluation. On September 29, Mr. Lammers telephoned Mr. Patchin and told him just to forget about the evaluation and report for work the next day. Mr. Lammers told Mr. Patchin that he was concerned about involving attorneys in the matter and the prospect of a lawsuit. Mr. Lammers asserted that Mr. Patchin did not want to undergo the evaluation, but Mr. Patchin had at that point resigned himself to undergoing the evaluation to satisfy the employer. On September 30, a couple hours before the mental health evaluation appointment, the employer cancelled the appointment and advised the provider that the employer would not pay for the appointment. The provider notified Mr. Patchin of the cancellation and the reason for the cancellation. Mr. Patchin elected not to return to the employment.

Mr. Patchin established a claim for unemployment insurance benefits that was effective September 21, 2014 in response to the suspension. Mr. Patchin had received \$2,576.00 in unemployment insurance benefits for the period of September 21, 2014 through November 15, 2014. Mr. Patchin has been released to work without restrictions since he established his claim.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

Iowa Administrative Code section 871 IAC 24.32(9) provides as follows:

Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

The weight of the evidence in the record establishes a suspension and discharge that was effective September 11, 2014, at which time the employer separated Mr. Patchin from the employment and conditions his return on submission to an unwarranted mental health evaluation.

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.

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 as the basis for the suspension and discharge. At the hearing, the employer alleged attendance issues, but provided no evidence concerning specific absences. The employer submitted unsworn written statements from coworkers regarding alleged belligerence on the part of Mr. Patchin. The employer elected not to present testimony from any of those employees. Mr. Patchin had presented sufficient evidence to rebut the assertions contained in the unsworn statements submitted by the employer. The administrative law judge had the opportunity to hear and weigh not only Mr. Patchin's testimony, but also his demeanor, during the hearing. The administrative law judge found no reason to discount Mr. Patchin's testimony and no reason, as a layperson, to suspect he was in need of mental health evaluation and/or treatment. The weight of the evidence indicates an involuntary separation prompted by the employer's concerns that Mr. Patchin might no longer be able to perform his duties to the employer's satisfaction, especially during the busy season. Such concerns would not constitute misconduct in connection with the employment.

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

DECISION:

The October 9, 2014, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason on September 11, 2014. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css