

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOMINIQUE D THOMPSON
Claimant

APPEAL NO. 14A-UI-03062-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CG ACQUISITION CO
Employer

OC: 01/05/14
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Dominique Thompson filed a timely appeal from the March 13, 2014, reference 03, decision that disqualified him for benefits. After due notice was issued, a hearing was held on April 14, 2014. Mr. Thompson participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate.

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: Dominique Thompson was employed by CG Acquisition Company as a full-time manufacturing associate from April 2013 until February 7, 2014, when the employer discharged him from the employment. The final incident that triggered the discharge concerned an interaction between Mr. Thompson and a former team lead on February 2, 2014. The former team lead told Mr. Thompson that he would make certain that Mr. Thompson no longer worked for the employer. Mr. Thompson asked the former team lead to step outside to talk about it. The former team lead had been speaking to Mr. Thompson in the midst of other employees. The former team lead reported to the plant superintendent that Mr. Thompson had threatened him. The plant superintendent summoned Mr. Thompson to the office to speak about the incident. Mr. Thompson asserted that there had been a misunderstanding and the former team lead had misinterpreted his comment. Mr. Thompson asked to have the former team lead join the meeting. The former team lead declined to join the meeting. At the time of discharge, the human resources representative asserted that Mr. Thompson was being discharged in part based on a prior final warning.

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.

Threats of violence in the workplace constitute misconduct that disqualifies a claimant for benefits. The employer need not wait until the employee acts upon the threat. See Henecke v. Iowa Dept. Of Job Services, 533 N.W.2d 573 (Iowa App. 1995).

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 employer did not provide a telephone number for the hearing and did not participate in the hearing. The evidence indicates that Mr. Thompson was discharged. The employer did not present any evidence to support the allegation that the discharge was based on misconduct. Absent testimony or other evidence from the employer sufficient to rebut Mr. Thompson's assertion that his remark was misconstrued, the evidence in the record is insufficient to establish 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. Thompson was discharged for no disqualifying reason. Accordingly, Mr. Thompson is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The claims deputy's March 13, 2014, reference 03, decision is reversed. The claimant was discharged 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/css