

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL A HOLLADAY
Claimant

APPEAL NO. 14A-UI-03287-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SHADE TREE SERVICE CO
Employer

OC: 02/23/14
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Michael Holladay filed a timely appeal from the March 18, 2014, reference 01, decision that disqualified him for benefits. After due notice was issued, a hearing was held on April 17, 2014. Mr. Holladay participated. Jeff Baker represented the employer and presented additional testimony through Curt Saunders, Joel Parker and Austin Kent.

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: Michael Holladay was employed by Shade Tree Service Company as a full-time bucket crew foreman until February 27, 2014, when the employer discharged him from the employment for causing damage to a company truck that day. The employer clears tree limbs in the vicinity of power lines. Mr. Holladay worked for the employer approximately five years. Mr. Holladay's immediate supervisor was Curt Saunders, General Foreman. At the time of discharge Mr. Holladay's crew and other work crews were assigned to work in the Cedar Rapids area.

When Mr. Holladay appeared for work on February 27, 2014, he told Mr. Saunders that it was too cold to work. The temperature was minus five degrees Fahrenheit. Mr. Saunders told Mr. Holladay that if he did not work at least a half day, he would have to make up the time on the following Saturday. Mr. Holladay had plans and did not want to make up the time. Mr. Saunder's had granted the "manual" crews permission not to work in the cold that day. The manual crews climbed trees to perform their work, whereas Mr. Holladay's bucket crew used a bucket truck to perform their work. Mr. Saunder's reasoning in having Mr. Holladay work that day was that it was easy for the bucket crew to warm themselves as needed, whereas it would be more difficult for the manual crew to warm themselves given the nature of their duties.

Mr. Holladay was angry about having to work, but indicated he would work that day. Mr. Holladay got into the driver's seat of the company truck that he drove on a regular basis in the course of his employment. The truck had a manual transmission. In anger, Mr. Holladay revved the engine excessively and then released or "dumped" the clutch to put the engine in gear. Because of the excessively high r.p.m.s and the abrupt manner in which Mr. Holladay had placed the engine in gear, Mr. Holladay's actions caused damage to the rear axle and/or drive shaft so that the truck would not move. When Mr. Holladay exited the truck, he said he knew what he had done and that he had been angry. At no time on February 27 did Mr. Holladay assert that his foot had slipped off the clutch pedal. Mr. Saunders told Mr. Holladay he could take another truck. Mr. Holladay initially indicated that he would take another truck, but then told Mr. Saunders that he was going home and would work the following Saturday. Mr. Saunders approved Mr. Holladay's decision to leave. Later that day, Mr. Saunders notified Mr. Holladay that he was discharged from the employment for intentional destruction of company property.

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.

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 establishes that the damage to the employer's truck was not the result of ordinary carelessness or negligence. The damage instead resulted from Mr. Holladay's anger and his decision to operate the employer's truck in a manner that could cause damage to the employer's truck. The weight of the evidence does indeed establish intentional abuse and destruction of the employer's property. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Holladay was discharged for misconduct. Accordingly, Mr. Holladay is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits.

DECISION:

The claims deputy's March 18, 2014, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The employer's account shall not be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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