

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRIAN J GROVER**

Claimant

**APPEAL NO. 13A-UI-00032-JT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KRAUS, WILLIAM M  
KRAUS CONSTRUCTION**  
Employer

**OC: 12/02/12  
Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the December 28, 2012, reference 01, decision that allowed benefits and that held the employer's account could be charged. The employer requested an in-person hearing. After due notice was issued, a hearing was held in Dubuque on February 28, 2013. Claimant Brian Grover participated. The employer did not appear for the hearing. The employer had not requested postponement of the hearing. The hearing had been rescheduled from a telephone hearing set for February 5, 2013 so that the employer's request for an in-person hearing could be honored. Claimant Brian Grover had appeared for the telephone hearing. The employer did not respond to the January 8, 2013 notice concerning the February 5, 2013 telephone hearing or the February 11, 2013 notice concerning the February 28, 2013 in-person hearing.

**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: Brian Grover was employed by Kraus Construction as a full-time laborer from the end of September 2012 until November 30, 2012, when the owner, William Kraus, telephoned and said the employment was not working out and the employer no longer needed Mr. Grover. The employer provided no other basis for the discharge during the very brief discharge telephone call.

## 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 employer failed to appear for the hearing and thereby failed to present any evidence to support the allegation that Mr. Grover was discharged for misconduct. The evidence in the record does not establish misconduct. Mr. Grover was discharged for no disqualifying reason and is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

**DECISION:**

The Agency representative's December 28, 2012, reference 01, decision is affirmed. 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/pjs