

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KPAKOLO COOPER
Claimant

APPEAL NO. 12A-UI-06122-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC
Employer

OC: 04/29/12
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Kpakolo Cooper filed a timely appeal from the May 21, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was started on June 19, 2012 and concluded on September 10, 2012, after the Appeals Section was unable to secure a Liberian-English interpreter. Claimant participated. Nikki Bruno represented the employer.

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: Kpakolo Cooper was employed by West Liberty Foods as a full-time production worker from 2010 until April 20, 2012, when Nikki Bruno, Human Resources Supervisor, discharged him from the employment for alleged negligence. The final incident that triggered the discharge was Mr. Cooper allegedly failure to scan product on April 18, 2012. Mr. Cooper was responsible for scanning the label on each box or container he handled. The employer alleges that Mr. Cooper failed to scan a bulk tank of raw turkey before it was routed to a freezer. Mr. Cooper asserts that others in his work area were bypassing him and moving product onto the next step before he could scan it. In making the decision to discharge Mr. Cooper from the employment, the employer considered two incidents and reprimands from February 2012. The first incident involved allowing boxes to leave the production facility without labels. The second incident involved 1600 pounds of product that did not get scanned. In connection with the second incident, Mr. Cooper advised the employer that he thought there was a defect in the scanner.

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 has failed to present sufficient evidence, and sufficiently direct and satisfactory evidence, to establish carelessness, negligence, or intentional misconduct in connection with the final incident that triggered the discharge. The employer failed to present testimony from anyone who worked in Mr. Cooper's work area to rebut his assertion that others in his work area were bypassing him and moving product onto the next step of the production process without giving him a chance to scan the product. The employer asserted the employer reviewed documentation that reflected the alleged failure to scan product, but the employer produced no such documentation for the hearing. The employer had the ability to present more direct and satisfactory evidence. Because the employer has failed to present sufficient evidence to establish carelessness, negligence, or intentional misconduct in connection with the final incident that triggered the discharge, the evidence fails to establish a current act of misconduct upon which a disqualification for unemployment insurance benefits might be based. See 871 IAC 24.32(8). Because the evidence fails to establish a current act, the administrative law judge need not consider the earlier allegations of carelessness or negligence, as they represent remote acts and cannot serve as the basis for disqualifying the claimant for benefits absent proof of a current act of misconduct.

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

DECISION:

The Agency representative's May 21, 2012, reference 01, 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/pjs