

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

PETER BAGLEY  
348 JEFFERSON ST  
KALONA IA 52247-9537

KALONA AUTO INC  
PO BOX 333  
KALONA IA 52247

Appeal Number: 06A-UI-06065-JTT  
OC: 05/14/06 R: 03  
Claimant: Respondent (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

Kalona Auto, Inc., filed a timely appeal from the June 1, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on June 29, 2006. Claimant participated. President Lynn Helmuth represented the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Peter Bagley was employed by Kalona Auto as a full-time automotive technician for approximately two years until May 12, 2006, when Service Manager Alvin Krammer and President Lynn Helmuth discharged him. The final incident that prompted the discharge occurred on April 15, 2006, when Mr. Bagley damaged the bumper of a car while removing towing gear. The employer did not witness Mr. Bagley disconnecting the gear, but observed the damage to the

towed vehicle. There were no other incidents that prompted the discharge that occurred after April 15. On April 28, Service Manager Alvin Krammer took Mr. Bagley to lunch, advised Mr. Bagley that the employment was not working out, and notified Mr. Bagley that his employment would end in two weeks. Mr. Bagley last appeared and performed work for the employer on May 12. The employer does not allege any ill will or intentional misconduct on the part of Mr. Bagley. Instead, the employer believes that Mr. Bagley was not as careful as he should have been. The employer points to an improperly performed brake repair on December 29, 2005, where the improper repair may have led to injury. Mr. Bagley has been performing auto repair work for several years and believed occasional mistakes were to be expected.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Bagley was discharged for misconduct in connection with the employment. It does not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 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 does establish negligence on the part of Mr. Bagley in connection with the damage to the bumper of the tow car on April 15. However, the evidence in the record establishes that this final act that prompted the discharge occurred on April 15, but that the employer did not advise Mr. Bagley until April 28 that the incident on that date could lead to his discharge. The evidence in the record establishes unreasonable delay between the incident that prompted the discharge and the meeting at which Mr. Krammer told Mr. Bagley he would be discharged. In other words, the incident of April 15 no longer constituted a "current act" as of April 28, and therefore cannot serve as a basis for discharging Mr. Bagley for benefits. The administrative law judge further concludes that the record establishes only isolated incidents of negligence and does not demonstrate carelessness and/or negligence so recurrent as amount to a willful and/or wanton disregard of the interests of the employer.

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

#### DECISION:

The Agency representative's decision dated June 1, 2006, reference 01, 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.

jt/kkf