

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRAVIS A GARDNER
Claimant

APPEAL NO. 17A-UI-00220-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADEL CHRYSLER INC
Employer

OC: 12/18/16
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Travis Gardner filed a timely appeal from the January 4, 2017, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on the claims deputy's conclusion that Mr. Gardner had been discharged on December 17, 2016 for willful or deliberate destruction of company property. After due notice was issued, a hearing was held on January 26, 2017. Mr. Gardner participated. The employer did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. Exhibit A was received into evidence.

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: Travis Gardner was employed by Adel Chrysler, Inc., as a full-time credit specialist from January 2016 until December 17, 2016, when Ross Kenobbe, General Manager, discharged him from the employment. On the evening of December 16, 2016, Mr. Gardner and his wife attended the employer Christmas party. Mr. Gardner drove his employer-provided demo vehicle to the work function. Mr. Gardner consumed alcohol at the Christmas party. Mr. Gardner has his wife drive the couple home from the Christmas party in demo vehicle. While Mrs. Gardner was operating the demo vehicle in wintry weather, the vehicle slid off the road. The incident resulted in damage to a door of the vehicle. Mr. Gardner anticipated that the employer might hold him responsible for the insurance deductible that would need to be paid in connection with repairing the vehicle. Mr. Gardner anticipated that the employer might also end his privilege to use the demo vehicle. Instead, Mr. Kenobbe notified Mr. Gardner, "We have to let you go, you are a liability."

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 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 employer did not participate in the appeal hearing and did not present any evidence to support the allegation that Mr. Gardner willfully or deliberately damaged company property. The employer did not present evidence to establish any misconduct in connection with the employment. The evidence in the record establishes a weather-related motor vehicle accident involving the employer's vehicle, but does not establish a willful or wanton disregard of the employer's interests in connection with that incident.

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

DECISION:

The January 4, 2017, reference 01, decision is reversed. The claimant was discharged on December 17, 2016 for no disqualifying reason. The claimant is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs