

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOUGLAS WRIGHT
Claimant

APPEAL NO. 12A-UI-04306-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**SIOUX CITY INSPECTION AND WEIGHING
SERVICES**
Employer

OC: 03/04/12
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Douglas Wright filed a timely appeal from the April 10, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 8, 2012. Mr. Wright participated and presented additional testimony through Dennis Fuller and David Wright. Rick Robinette represented the employer. Exhibits One through Five and A were received into evidence. The hearing in this matter was consolidated with the hearing in Appeal Numbers 12A-UI-04300-JTT and 12A-UI-04301-JTT.

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: Douglas Wright was employed by Sioux City Inspection and Weighing Services as a full-time grain inspector from 1994 until March 2, 2012, when Rick Robinette, President, discharged him from the employment. Mr. Wright's immediate supervisor was Tom Dahl, General Manager.

The final incident that triggered the discharge occurred on March 2, 2012. Mr. Wright was working at Cargill facility with other employees. The other employees included grain inspector Leslie McCabe. Ms. McCabe cohabits with Sioux City Inspections and Weighing Services Manager Craig Zoss. As Ms. McCabe was leaving the Cargill facility to return to the employer's office a block away, Mr. Wright told her something along the lines of, "Tell your man that I'm not coming down there tonight after the shift ends." While Mr. Wright did not intend any offense through the comment, Ms. McCabe took offense. Ms. McCabe told Mr. Wright to tell Mr. Zoss himself. Ms. McCabe reported the comment to Mr. Zoss, who in turn reported the incident to Mr. Dahl. Mr. Dahl reported the matter to Mr. Robinette. Mr. Robinette interviewed, David Wright, who is Doug Wright's uncle. David Wright told the employer he was present, but did not hear anything.

Mr. Robinette then summoned Doug Wright to a meeting. Mr. Wright told the employer what he had said. The conversation moved into other areas, specifically, the employer's practice of having inspectors stay at the Cargill plant to inspect late arriving trucks. The employer had reprimanded Mr. Wright months earlier for failing to stay for a late truck. The employer then faulted Mr. Wright for staying on March 1 to service a late arriving truck. During the meeting on March 2, Mr. Wright told Mr. Robinette that he thought the employer needed a clear policy. The employer perceived Mr. Wright as disrespectful and told him, "I am tired of you causing fucking problems—you're fucking fired."

In making the decision to discharge Mr. Wright, the employer considered a reprimand issued in March 2011. The reprimand was prompted by a conversation between Mr. Wright and a grain truck driver. The driver had a malfunctioning CB. Mr. Wright ordinarily communicated with drivers through use of a CB. When the driver got out to convey and receive information in connection with the inspection, Mr. Wright told the driver that if he could afford an automatic tarp, he could afford a functioning CB. The driver took offense and complained to Cargill, which in turn relayed the complaint to Sioux City Inspection and Weighing Services.

In making the decision to discharge Mr. Wright from the employment, the employer considered a reprimand in April 2011. The reprimand was prompted by Mr. Wright not staying to inspect a grain truck that arrived after the cut off time at the Cargill facility. Mr. Wright left the Cargill facility instead of inspecting the truck.

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 did not present testimony from Ms. McCabe, the alleged victim of Mr. Wright’s comment on March 2. The employer had the ability to present such testimony, but elected not to. The weight of the evidence indicates that Mr. Wright may have exercised poor judgment but meant no offense with the comment to Ms. McCabe on March 2. A reasonable person would not have taken offense to the comment. Mr. Wright’s comment merely acknowledged the relationship between Ms. McCabe and Mr. Zoss. Ms. McCabe, Mr. Zoss, and the employer invited such acknowledgements by comingling personal and business relationships in the workplace. There is insufficient evidence in the record to establish that Mr. Wright took a derogatory, offensive, or demeaning tone with Ms. McCabe. Ms. McCabe overreacted. The employer later gave a disproportionate response when Mr. Wright told his side of the story and then raised the legitimate question of consistency in the employer’s expectations about whether he should stay for late grain trucks.

The prior reprimands also did not involve conduct that rose to the level of misconduct, though Mr. Wright could have exercised better judgment when interacting with the driver in March 2011 or when he elected not to inspect the late truck in April 2011.

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

DECISION:

The Agency representative's April 10, 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/css