

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**TREVOR J BULTEN**  
Claimant

**CS RESIDENTIAL LLC**  
Employer

**APPEAL NO. 20A-UI-03656-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/22/20**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the April 29, 2020, reference 01, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant was discharged on March 23, 2020 for failure to follow instructions in the performance of his job. After due notice was issued, a hearing was held on May 20, 2020. Claimant participated. The employer did not provide a telephone number for the appeal hearing and did not participate. Exhibits A and B were 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: The claimant was employed as a full-time apartment complex maintenance technician from December 2019 until March 23, 2020, when Nate Teed, Project Manager, notified the claimant that he was being discharged from the employment due to budgetary issues and a lagging economy. Claimant was in the middle of a mailbox lock replacement project when the employer notified him of the termination. The employer made no mention of performance concerns at the time of the discharge.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5(2)(a) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

The evidence in the record establishes a March 23, 2020 discharge for no disqualifying reason. The employer did not participate in the appeal hearing and presented no evidence to prove, by a preponderance of the evidence, misconduct in connection with the employment. The evidence in the record does not indicate misconduct of any sort. Accordingly, the claimant is

eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

**DECISION:**

The April 29, 2020, reference 01, decision is reversed. The claimant was discharged on March 23, 2020 for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

A rectangular box containing a handwritten signature in cursive script that reads "James E. Timberland".

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James E. Timberland  
Administrative Law Judge

May 29, 2020  
Decision Dated and Mailed

jet/scn