

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

IAN W DENNIS

Claimant

APPEAL NO. 14A-UI-03034-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JACOBSON STAFFING COMPANY LC

Employer

OC: 02/16/14

Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 10, 2014, reference 02, decision that allowed benefits to the claimant provided the claimant was otherwise eligible and that held the employer's account could be charged for benefits. After due notice was issued, a hearing was held on April 10, 2014. Claimant Ian Dennis participated. Sarah Dean, Account Manager, represented the employer. The administrative law judge took official notice of the agency's administrative record of benefits disbursed to the claimant. The administrative law judge took official notice of the fact-finding materials, but did so only for the purpose of determining whether the employer participated in the fact-finding interview.

ISSUE:

Whether the claimant was discharged from the assignment and/or from the employment 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: Jacobson Staffing Company is a temporary employment agency. Ian Dennis last performed work for that employer in a full-time temporary work assignment at a John Deere warehouse facility in Des Moines. Jacobson Staffing ended the assignment on December 18, 2013 at the request of John Deere. The decision to end the assignment was based on an allegation that Mr. Dennis had harassed a coworker after being directed to stay away from the coworker. Mr. Dennis and the coworker were Jacobson Staffing employees. They were roommates and carpooled to and from work. On Mr. Dennis' last day in the assignment, the coworker initiated an argument with Mr. Dennis at work about a matter outside of work. The John Deere supervisor directed both men to stay away from each other. Later in the shift, Mr. Dennis asked the coworker whether he could get an item he had left in the coworker's car. The contact may have led to another argument. An account representative subsequently notified Mr. Dennis that the assignment was

ended and that Jacobson Staffing was conducting a further investigation. No one from Jacobson Staffing spoke to Mr. Dennis further about the matter other than to notify him that he was not eligible for placement in further work assignments. Jacobson Staffing has a policy that prohibits workplace harassment.

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 presented insufficient evidence to establish misconduct in connection with the assignment or otherwise in connection with the employment. The employer presented no testimony, and no written statements, from anyone with personal knowledge of the matters that led to the assignment or the employment being terminated. The coworker involved in the events continues to work for Jacobson Staffing. The human resources manager who purportedly performed an investigation into alleged harassment continues to work for Jacobson Staffing.

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

DECISION:

The Claims Deputy's March 10, 2014, reference 02, decision 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs