

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

GEORGE EPPS
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL NO. 19A-UI-08535-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/06/19
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

George Epps filed a timely appeal from the October 23, 2019, 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 October 8, 2019 for violation of a known company rule. After due notice was issued, a hearing was held on November 21, 2019. Mr. Epps participated. Mehdina Kurtovic, Human Resources Administrative Assistant, represented the employer.

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: George Epps was employed by Tyson Fresh Meats, Inc. as a full-time maintenance mechanic from April 2019 until October 11, 2019, when the employer discharged him from the employment.

The final incident that triggered the discharge was a lock-out/tag-out violation on October 3, 2019. Mr. Epps work as a maintenance mechanic required that he follow lock-out/tag-out safety protocol before commencing work on a machine to prevent injury to him or others. Ms. Epps received appropriate training in lock-out/tag-out protocol at the start of the employment and was familiar with the lock-out/tag-out protocol. On October 3, 2019, Mr. Epps initially followed the lock-out/tag-out protocol before commencing work on a meat casing machine in the production area. After Mr. Epps completed his initial work on the machine he removed his lock from the machine and then tested the machine. The machine was still not working properly. At that time, a production supervisors arrived and began to yell at Mr. Epps about the machine being off-line and production being stopped for 10 minutes. The supervisor insisted that the machine be fixed immediately so that production could recommence immediately. Mr. Epps and/or the production supervisor noticed there was a box stuck in the casing machine. In the heat of the moment and in the context of the production supervisor yelling at him, Mr. Epps forgot that he had removed his lock from the machine. Without going through the lock-out/tag-out process, Mr. Epps reached into the machine and removed the box without following the lock-out/tag-out protocol. Mr. Epps realized his error as soon as he reached into the machine and then took immediate

steps to bring himself back into compliance with the lock-out/tag-out protocol. The production supervisor noted the lock-out/tag-out violation and reported it to the maintenance superintendent, who immediately suspended Mr. Epps from the employment. The employer recalled Mr. Epps to the workplace on October 11, 2019 to discharge him from the employment.

In making the decision to discharge Mr. Epps from the employment, the employer considered an earlier lock-out/tag-out violation in July 2019. In that instance, Mr. Epps reached into a machine to unjam the machine without following the lock-out/tag-out protocol.

Mr. Epps discharge occurred at a time when Mr. Epps had a pending grievance concerning the employer's decision to move him from a day shift to an overnight shift to make way for a supervisor who was stepping down from a supervisory position. The check was effective 1.5 months prior to the final lock-out/tag-out incident.

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 weight of the evidence in the record establishes a discharge for no disqualifying reason. The employer elected not to present testimony from anyone with personal knowledge of the incidents that factored in the discharge. The employer presented insufficient evidence to rebut Mr. Epps testimony regarding the two incidents that factored in the discharge. The weight of the evidence establishes mitigating circumstances surrounding the final lock-out/tag-out incident. The evidence establishes that the production supervisor distracted Mr. Epps from the safety protocol by yelling and ranting at Mr. Epps. Mr. Epps had just been working on the machine and forgot in the heat of the moment that the machine was not still locked. Mr. Epps made a good faith error and corrected it as soon as he realized the error. The final incident involved carelessness, but did not involve an intentional violation of the lock-out/tag-out safety protocol. The earlier lock-out/tag-out violation occurred eight months early. The two incidents are insufficient to establish a pattern of carelessness and/or negligence indicating a willful and wanton disregard of the employer's interests.

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

DECISION:

The October 23, 2019, reference 01, decision is reversed. The claimant was discharged for no disqualifying reason. The discharge was effective October 11, 2019. 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/scn