

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**CHAD A EBELSHEISER**  
Claimant

**APPEAL NO. 18A-UI-08487-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PRO LINES INC**  
Employer

**OC: 07/15/18**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Chad Ebelsheiser filed a timely appeal from the August 2, 2018, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on the Benefits Bureau deputy's conclusion that Mr. Ebelsheiser was discharged on June 15, 2018 for violation of a known company rule. After due notice was issued, a hearing was held on September 4, 2018. Mr. Ebelsheiser participated personally and was represented by Steve Abbott. John Bartlett 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: Chad Ebelsheiser was employed by Pro Lines, Inc., d/b/a I Work and Play, as a full-time screen print production worker from March 2017 until June 15, 2018, when John Bartlett, President and owner, discharged him from the employment. Mr. Ebelsheiser's work hours were 7:30 a.m. or 8:00 a.m. to 5:00 p.m., Monday through Friday. Jeremy Borcharding, Production Coordinator, was Mr. Ebelsheiser's immediate supervisor. Mr. Ebelsheiser performed his work duties at the employer's production facility in Grimes. Mr. Ebelsheiser last performed work for the employer on June 12, 2018. On that day, Mr. Ebelsheiser worked with several other employees at the Grimes facility. On that day, Mr. Ebelsheiser had in his possession and drank from a Quick Trip beverage container. There was a Quick Trip convenience store located near the Grimes facility.

On the morning of June 13, 2018, Alex Hansen, an employee of Empire Electric went to the I Work and Play retail store in West Des Moines and told Mr. Bartlett that while Mr. Hansen had been performing electrical contracting work at the I Work and Play Grimes production facility on June 12, 2018, Mr. Ebelsheiser had handed Mr. Hansen a beverage, that Mr. Hansen had taken a sip, that Mr. Hansen tasted alcohol in the beverage, and that Mr. Hansen had handed the beverage back to Mr. Ebelsheiser. Mr. Bartlett had been in and out of the Grimes facility on June 12. Mr. Bartlett's time at the Grimes facility on June 12 included time at the end of

Mr. Ebelsheiser's work day, when Mr. Bartlett checked in with Mr. Ebelsheiser and others to ask how production was going. Though Mr. Bartlett had been in and out of the Grimes facility on June 12, Mr. Hansen had not brought any concerns to Mr. Bartlett's attention on that day. Nor had Mr. Bartlett discerned any cause for concern when interacting with Mr. Ebelsheiser toward the end of Mr. Ebelsheiser's workday on June 12. At Mr. Bartlett's request, Mr. Hansen provided Mr. Bartlett with a brief written statement on June 13.

Based on Mr. Hansen's allegation that Mr. Ebelsheiser had possessed and attempted to share an alcoholic beverage on June 12, Mr. Bartlett intercepted Mr. Ebelsheiser in the Grimes parking lot when Mr. Ebelsheiser arrived for work on the morning of June 13. Mr. Bartlett asserted at that time that Mr. Ebelsheiser had been drinking alcohol at work the previous day. Mr. Ebelsheiser denied the allegation. Mr. Bartlett suspended Mr. Ebelsheiser with pay and directed him to consult with his union representative. Mr. Ebelsheiser is a member of the Communications Workers of America (CWA) Local 7108, which is headquartered in Waterloo. Mr. Ebelsheiser's union local representative is Steve Abbott, President. On June 15, 2018, Mr. Bartlett notified Mr. Ebelsheiser in writing that he was being discharged for violating the employer's drug and alcohol policy. The employer had provided Mr. Ebelsheiser with an employee handbook that included the drug and alcohol policy. The policy did not include a provision for drug or alcohol testing.

#### **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).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The weight of the evidence in the record fails to establish, by a preponderance of the evidence, that Mr. Ebelsheiser possessed, consumed, or was under the influence of alcohol while at work on June 12, 2018. The administrative law judge has concerns about Mr. Bartlett's credibility and did not find Mr. Bartlett to be a reliable witness. Mr. Ebelsheiser's initial testimony included an unequivocal assertion that the supervisor, Mr. Borcharding, has located a cup associated with June 12, had smelled alcohol in one or more cups, and that Mr. Bartlett had sent the cups to be lab tested for alcohol. Upon cross examination by Mr. Abbott, Mr. Bartlett repeatedly avoided providing a direct answer to the question of whether he sent the cups for testing and ultimately conceded that he had not sent the cups for testing. This stark inconsistency in the testimony, and other reliability and due process concerns brought forth during Mr. Abbott's questioning of Mr. Bartlett, substantially undermined the administrative law judge's ability to give weight to the various assertions contained in Mr. Bartlett's testimony. Mr. Bartlett elected not to present testimony through Mr. Hansen, Mr. Borcharding or anyone else who allegedly had firsthand knowledge that the employer factored in the discharge decision. The administrative law judge

concludes that the employer presented insufficient evidence to rebut Mr. Ebelsheiser's denial that he possessed, consumed, or was under the influence of alcohol on June 12, 2018.

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

**DECISION:**

The August 2, 2018, reference 01, decision is reversed. The claimant was discharged on June 15, 2018 for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs