

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASMIN BECIROVIC
Claimant

APPEAL NO. 10A-UI-07323-JT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IAS INC
Employer

OC: 04/18/10
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Jasmin Becirovic filed a timely appeal from the May 11, 2010, reference 01, decision that denied benefits. Mr. Becirovic requested an in-person hearing. After due notice was issued, an in-person hearing was held on June 23, 2010 in Des Moines. Mr. Becirovic did not appear for the hearing. Julie Wilson represented the employer. Exhibits One through Five 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: Jasmin Becirovic was employed by IAS, Inc., d/b/a Candleridge Apartments, as a full-time maintenance employee from August 2009 until April 16, 2010, when Julie Wilson, Manager, discharged him for repeated carelessness in the performance of his assigned duties. Ms. Wilson was Mr. Becirovic's immediate supervisor.

The final incident that prompted the discharge occurred on April 16, 2010. On that day, Mr. Becirovic was assigned to install a countertop in an apartment. The counter area included a raised breakfast bar area. Mr. Becirovic left caulk smeared on the surface of the breakfast bar. Mr. Becirovic also neglected to perform essential repair on the wall area between the main countertop and the raised breakfast bar.

The final incident prompted multiple prior instances of Mr. Becirovic performing his assigned duties in a careless manner. Ms. Wilson had issued a verbal warning to Mr. Becirovic on September 24, 2009 after Mr. Becirovic painted garage trim in a sloppy manner and got paint on the woodwork in an apartment and left it in that condition. On January 4, 2010, Ms. Wilson issued a verbal warning to Mr. Becirovic after he got paint on a recently shampooed carpet and left it in that condition. The January 4 reprimand also addressed the fact that Mr. Becirovic got

paint on a recently refinished tub and then removed part of the tub finish when he attempted to remove the paint he had splattered.

Mr. Becirovic had the ability to perform quality work. Ms. Wilson had continued Mr. Becirovic in the employment in the hope that he would start paying more attention when he performed his assigned work duties. Ms. Wilson had been to Mr. Becirovic's home, had seen the high quality work Mr. Becirovic performed on his home, and desired to have Mr. Becirovic demonstrate that same attention to detail when performing his work duties.

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 weight of the evidence indicates that Mr. Becirovic was careless on April 16 when he installed the countertop and left caulk smeared across the surface. Mr. Becirovic was negligent in connection with the same project by failing to remove the caulk and by failing to perform wall repair work in the same area of the same apartment. The final incident of negligence and carelessness followed multiple similar instances and was part of a pattern that indicated a wanton and willful 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. Becirovic was discharged for misconduct. Accordingly, Mr. Becirovic is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer’s account shall not be charged for benefits paid to Mr. Becirovic.

DECISION:

The Agency representative’s May 11, 2010, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The employer’s account will not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs