

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONALD RIFE
Claimant

APPEAL NO. 17A-UI-06247-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OLD DOMINION FREIGHT LINE INC
Employer

OC: 05/21/17
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 June 8, 2017, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on the claims deputy's conclusion that the claimant was discharged on May 16, 2017 for no disqualifying reason. After due notice was issued, a hearing was held on July 10, 2017. Claimant Donald Rife participated. Marty Pudlowski represented the employer. The administrative law judge took official notice of the agency's record of benefits disbursed to the claimant and received Exhibit 1 into evidence.

ISSUES:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Donald Rife was employed by Old Dominion Freight Line, Inc. as a full-time Line Haul Driver from 2015 until May 16, 2017, when Jerry McGlown, Regional Human Resources Manager, and Marty Pudlowski, Des Moines Terminal Service Center Manager, discharged him from the employment for urinating outside the employer's Rock Island, IL terminal on Sunday, May 14, 2017. The incident occurred at 8:15 a.m. That morning, Mr. Rife had driven from the employer's Des Moines terminal, which is actually located in Ankeny, to the Rock Island, Illinois terminal. Mr. Rife used the restroom at the Des Moines terminal before he started the trip. The trip from the Des Moines terminal to the Rock Island terminal took 2.5 to three hours over a distance of 157 miles. Mr. Rife was on a prescription blood pressure medication that had frequent urination as a side effect. Mr. Rife did not stop at any truck stops or rest areas between Ankeny and Rock Island.

When Mr. Rife was about five miles from the Rock Island terminal he suddenly and urgently needed to urinate. There were no truck stops or rest areas during that last five miles of

Mr. Rife's trip to the Rock Island terminal. By the time Mr. Rife reached the automatic gate at the Rock Island terminal, he was about to wet himself and had to physical restrict his private area with one hand to keep from wetting himself. Once inside the gate, Mr. Rife pulled his tractor to an area near two parked trailers, walked between the trailers and urinated on the ground between the two trailers. Mr. Rife had tried to shield himself from public view by walking between the two trailers. If Mr. Rife had taken the time to enter the terminal to access the restroom, entry to the terminal would have required use of both his hands and Mr. Rife would have wet himself.

While Mr. Rife was urinating onto the asphalt between the two trailers, the Rock Island Terminal Manager/Service Center Manager, Felix Saucedo, pulled up to the area with his wife and child in the car, exited the car and confronted Mr. Rife. Mr. Rife tried to explain his circumstances. Mr. Saucedo requested Mr. Rife's employee number and indicated that he was going to report the incident to the Des Moines terminal manager. Mr. Rife used his phone to call a dispatcher, explained his circumstances, and had the dispatcher speak with Mr. Saucedo. The dispatcher advised Mr. Rife to speak to Mr. Pudlowski about the matter the following day. Mr. Rife contacted Mr. Pudlowski immediately and explained his circumstances. An hour later, Mr. Saucedo called Mr. Pudlowski. Mr. Saucedo followed up with an email to Mr. Pudlowski.

On May 16, Mr. Pudlowski conferred with Mr. McGlown, who directed Mr. Pudlowski to discharge Mr. Rife from the employment. On the day of the discharge, Mr. Rife obtained a note from his doctor that indicated his medication had frequent urination as a side effect. Mr. Rife promptly provided the medical note to Mr. Pudlowski, but the note did not prompt the employer to reconsider the discharge. Rather, the employer concluded that if Mr. Rife knew he needed to urinate frequently, he should have stopped at an appropriate place along the trip route. The employer had recently discharged another employee for public urination, but that matter had not involved a medication that would subject the employee to the need to frequently urinate.

At that time, the Terminal Manager, Felix Saucedo and his wife were at the terminal cleaning. Mr. Rife pulled up to the building walked between two trailers and urinated. Mr. Rife suffers from high blood pressure and takes a prescribed medication that has a side effect of sudden need to urinate. Mr. Rife urinated outside between the two trailers to avoid wetting himself and did not have sufficient time to make it into the building to the restroom. On May 16, 2017, Mr. Rife provided Mr. Pudlowski with a medical note regarding his medication and the side effect of sudden onset of the need to urinate.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

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). 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).

Section 10-21.1 of the Rock Island, Illinois City Code provides as follows:

Sec. 10-21.1. Public Urination And Defecation Prohibited:

It shall be unlawful for any person to urinate or defecate on any street, alley, sidewalk, parkway, public parking lot, or other public place other than in a facility designed for that purpose.

Section 10-22 of the Rock Island, Illinois City Code provides that violation of the above ordinance is punishable by a \$50.00 fine.

The weight of the evidence in the record establishes an incident of poor judgment and carelessness on Mr. Rife's part, but does not establish misconduct in connection with the employment that would disqualify Mr. Rife for unemployment insurance benefits. Mr. Rife knew at that time he started the trip on May 14 that he was taking medication that had frequent need to urinate as a side effect. Though Mr. Rife urinated at the Des Moines terminal, he elected not to stop at any truck stop or at any rest area along the way to relieve himself. A reasonable person with Mr. Rife's medical condition would have stopped at some point regardless of whether he felt the need to urinate and would have done so to avoid that urgent situation Mr. Rife found himself in five miles from the Rock Island terminal. However, once Mr. Rife reached that point of dire urgency, he was confronted with the choice of wetting himself or locating a somewhat discreet place to relieve himself. Mr. Rife chose the latter. Though the conduct appears on the surface to violate the Rock Island ordinance, there were extenuating and mitigating circumstances. Under the particular circumstances, Mr. Rife's conduct did not rise to level of an intentional and substantial disregard of the employer's interests and, therefore, does not disqualify him for unemployment insurance benefits. Mr. Rife is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The June 8, 2017, reference 01, 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/rvs