

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GEOFFREY A MYERS

Claimant

APPEAL NO. 12A-UI-12806-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SIGOURNEY TRACTOR & IMPLEMENT

Employer

OC: 09/16/12

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 October 15, 2012, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on November 27, 2012. Claimant Geoffrey Myers participated. Lindsay Epperson represented the employer and presented additional testimony through Terry Benson and Jason Becker. Exhibits One and Two 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: Geoffrey Myers was employed by Sigourney Tractor & Implement Company as a full-time service technician from 2008 until September 20, 2012, when Bob Sinclair, Owner, discharged him from the employment. Mr. Myer's immediate supervisor was Terry Benson, Service Manager.

On the morning of September 11, 2012, Mr. Myers was on Highway 92 west of Indianola returning from an early morning parts pickup in the employer's truck when another vehicle swerved in front of him to avoid a deer and Mr. Myers swerved to avoid hitting the other car. Mr. Myers wound up colliding with a post on the opposite side of the road. Mr. Myers was very upset by the incident and stopped about a mile down the road from where he had swerved. Mr. Myers saw that the company truck was damaged. Because Mr. Myers was upset by the experience, he did not have the presence of mind to fully and objectively survey the damage to the company truck. Mr. Myers telephoned Mr. Benson and advised that he had swerved to miss a deer and that there was damage to the company truck. Mr. Myers did not provide a complete and objective report of the incident. Mr. Myers followed Mr. Benson's instructions to immediately return to the workplace in Sigourney, some two and a half hours away. Mr. Myers did not report the incident to law enforcement and Mr. Benson did not direct him to report the incident to law enforcement.

When Mr. Myers returned to the workplace, Mr. Benson reviewed the damage to the truck and concluded it was more extensive than what Mr. Benson had described on the phone immediately following the accident. The employer pulled the GPS record for the truck and observed that Mr. Myers had stopped along the road 30 minutes before the collision. When questioned about that stop, Mr. Myers advised the employer that he had stopped to urinate on the side of road out in the country. The nearest town was six miles away.

Mr. Benson suspected there was more to the story of the accident than Mr. Myers had shared with the employer. Mr. Benson was concerned that Mr. Myers might have struck a power line pole. Mr. Benson had Jason Becker, Controller, interview Mr. Myers on September 14 to see what Mr. Myers would say to Mr. Becker. Mr. Myers told Mr. Becker that he knew the post he struck was neither a power line pole nor a mailbox.

On September 14, Bob Sinclair, Owner, decided to suspend Mr. Myers. The employer notified Mr. Myers that he was indefinitely suspended until Mr. Myers provided proof of what he had hit. Mr. Sinclair also expected Mr. Myers to provide the employer with a police report, despite the fact that law enforcement had not been summoned at the time of the incident. Mr. Myers returned to the scene of the accident and discovered that he had in fact collided with a mailbox. The mailbox had already been replaced. When Mr. Myers contacted the Warrant County Sheriff's Office about getting a police report, he was told it was too late. Mr. Myers returned to the employer with news of what he had hit and with the news that it was too late to get a police report.

The employer decided to discharge Mr. Myers for allegedly being untruthful about the accident, for urinating on the side of the road, and based on an additional recent incident wherein Mr. Myers and a customer had stepped under the forks of a forklift while the forks were raised. The customer had created the unsafe situation by stepping under the forks and Mr. Myers was trying to address that situation and also got under the forks of the forklift while doing so.

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 in the record establishes errors in judgment on the part of Mr. Myers, but the evidence does not establish misconduct in connection with the employment. The weight of the evidence indicates that Mr. Myers was indeed sufficiently upset after the accident on September 11 that he did not take full and objective stock of the damage to the employer's vehicle or of the nature of the pole with which he had collided. While Mr. Myers had an obligation to contact law enforcement in connection with the property damage incident, he did not do that. In that respect, he was negligent. However, the weight of the evidence establishes that Mr. Myers did not in fact know that he had collided with a mailbox until days later. That lack of knowledge is a mitigating factor. The employer contributed to the negligence by failing to instruct Mr. Myers to summon law enforcement to the scene and by instead directing him to immediately return to the workplace. A reasonable person might expect that the information a person might provide at the time of a startling, fear-inducing experience might not exactly match the information the person would be able to provide later when they were more calm and collected. The employer appears to have prematurely jumped to the conclusion that Mr. Myers was being untruthful and then appears to have clung to that erroneous conclusion despite Mr. Myers' good faith effort to respond to the employer's concerns. It is not uncommon for one to suddenly come upon a deer on an Iowa highway and for one to be forced to take instant action in attempt to avoid or minimize a collision. The administrative law judge does not find evidence of dissembling in the statements Mr. Myers provided in response to the employer's questioning of Mr. Myers.

The employer offers fallback arguments to support its position that Mr. Myers was discharged for misconduct. The fallback arguments are that Mr. Myers engaged in misconduct by urinating on the side of a country road and that the deer-related accident, coupled with another unsafe act involving a forklift, indicated a disregard for safety amounting to misconduct. While many communities have ordinances against public urination, the administrative law judge is unaware of any Iowa law that would deem Mr. Myers' urination on the side of a road out in the country a criminal offense. The incident did involve poor judgment on the part of Mr. Myers and the employer does raise the legitimate concern that such conduct would not reflect well on the company whose truck was parked along the side of the road during the incident. However, there is no indication that anyone witnessed Mr. Myers relieving himself. With regard to the forklift incident, the employer has presented insufficient evidence to rebut Mr. Myers' testimony that the customer caused the unsafe situation and that Mr. Myers was merely trying to resolve it.

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

DECISION:

The Agency representative's October 15, 2012, 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/css