

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALPHONSO W OLDS**  
Claimant

**APPEAL NO. 17A-UI-01253-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**J D & SONS INC**  
Employer

**OC: 01/15/17**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Alphonso Olds filed a timely appeal from the February 3, 2017, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on the claims deputy's conclusion that Mr. Olds was discharged on November 16, 2016 for misconduct in connection with the employment. After due notice was issued, a hearing was held on February 23, 2017. Mr. Olds participated. James Stonehocker represented the employer. Exhibits 3, 5, 6, 7 and A through F were received 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 discharge was based on a current act.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: J.D. & Sons, Inc., is a trucking company that delivers FedEx packages pursuant to a contract with FedEx. FedEx is J.D. & Sons' only customer. Pursuant to the contract, FedEx assumes liability for the freight and the truck when there are FedEx packages on board. Pursuant to the agreement, the employer must suspend a driver from performing FedEx work for "Unsafe Driving Offenses" under circumstances that include the following:

Sixty days for committing two moving violations resulting in convictions, in separate instances in a thirty-six month period, where the second moving violation occurs while operating a CMV [commercial motor vehicle]; (ii) sixty days for committing two moving violations resulting in convictions, in separate instances in a thirty-six month period, where the second moving violation occurs while operating a non-CMV and results in the revocation, cancellation, or suspension of the driver's license or permit for non-CMV driving privileges; or (iii) 120 days for committing three or more moving violations resulting in convictions, in separate instances in a thirty-six month period, in any vehicle.

Alphonso Olds was employed by J.D. & Sons as a full-time local route FedEx delivery driver from January 2015 until November 8, 2016, when James Stonehocker, President and owner,

discharged him from the employment. On November 7, 2016, FedEx notified Mr. Stonehocker that FedEx deemed Mr. Olds disqualified for FedEx work pursuant to the contract in light of Mr. Olds convictions for moving violations. On October 15, 2016, Mr. Olds was cited for speeding in a FedEx truck. Mr. Olds entered a guilty plea to the charge on November 1, 2016 by paying the scheduled fine and was thereby convicted of the speeding offense at that time. Mr. Olds had earlier been convicted of speeding offenses involving a FedEx truck in November 2015, March 2016, June 2016, and September 2016. Mr. Olds knew at all relevant times that his employment was subject to the contract between the employer and FedEx and that FedEx would periodically review his driving record.

#### **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).

In *Cook v. Iowa Department of Job Service*, 299 N.W.2d 698 (Iowa 1980), the Iowa Supreme Court held that when a truck driver lost his insurability because of traffic tickets he accumulated, and thereby lost his ability to perform his driving duties, the loss was self-inflicted and constituted misconduct. In *Cook*, the claimant’s employment required that he be able to operate motor vehicles. Through commission of traffic offenses and resulting convictions, the claimant rendered himself incapable of continuing in the employment. In the present case...

The evidence in the record establishes a discharge for misconduct in connection with the employment. Mr. Olds self-inflicted the FedEx disqualification through his repeated speeding convictions and rendered himself incapable of continuing in the employment. The most recent conviction was entered on November 1, 2016, a week prior to the discharge. FedEx notified the employer on November 7, 2016 of its intention to enforce the driver disqualification provision in response to its review of Mr. Olds’ motor vehicle record. The discharge was based on a current act of misconduct. Mr. Olds is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Olds must meet all other eligibility requirements. The employer’s account shall not be charged.

**DECISION:**

The February 3, 2017, reference 01, decision is affirmed. The discharge date is corrected to November 8, 2016. The claimant was discharged for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until he has worked in and paid wages for insured work equal to ten times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer’s account shall not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs