

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TYLER J DARLAND
Claimant

APPEAL NO. 14R-UI-11023-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORTHEAST IOWA MOTORS LLC
Employer

OC: 03/23/14
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

This matter was before the administrative law judge for new hearing upon remand by the Employment Appeal Board. The claimant, Tyler Darland, had filed a timely appeal from the April 15, 2014, reference 02, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on an agency conclusion that he had been discharged on March 24, 2014 for misconduct in connection with the employment. After due notice was issued, the new hearing was held on December 8, 2014. Mr. Darland participated personally and was represented by attorney, Mark Anderson. Attorney Thais Folta represented the employer and presented testimony through owners, Mark Bina and Brian Bina. Exhibits One, Two and Three 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: Northeast Iowa Motors, L.L.C., is a full service auto repair shop and car dealership owned by brothers Mark Bina and Brian Bina. Tyler Darland, a mechanic, became a full-time employee of Northeast Iowa Motors when the Binas purchased the repair business in April 2013. On March 24, 2014, the employer discharged Mr. Darland from the employment.

The final incident that triggered the discharge occurred on March 24, 2014. The employer's business had recently been burglarized and tens of thousands of dollars' worth of tools had been taken in the burglary. After the burglary, Mr. Darland had asserted that he alone had lost tens of thousands of dollars in tools. That assertion and Mr. Darland's expectation of compensation for the purported loss thereafter became a source of friction in the employment relationship and continued to be a source of disagreement through the end of the employment. After the burglary, the employer determined that additional tools had gone missing. The employer suspected that one of the mechanics might be responsible for the additional missing tools. On March 24, the employer directed the mechanics to relinquish their keys to the

workplace. The employer then learned from another mechanic that Mr. Darland had been using the tools in question. When Mark Bina spoke to Mr. Darland about the tools in question, Mr. Darland became angry. Mr. Darland started yelling at Mark Bina and started directing profanity at Mark Bina. Mr. Darland told Mark Bina that he, Mr. Darland, was not worthless like Mr. Bina. After the outburst, the Binas concluded they could not continue Mr. Darland's employment.

In making the decision to discharge Mr. Darland from the employment, the employer also considered work performance issues and attendance issues. Mr. Darland had on multiple occasions misdiagnosed, or delayed proper diagnosis, of a customer's repair issue because Mr. Darland did not want to utilize the employer's subscription to a master mechanic repair hotline. With regard to the attendance matters, Mr. Darland had been late to work for personal reasons on January 17, February 10, and March 4, 2014. On March 20, Mr. Darland had given proper notice that he would be late getting to work due to the need to care for his sick child until his mother-in-law could take over caring for the child. Mr. Darland then did not go to work at all because he fell asleep. The employer was not able to make contact with Mr. Darland until the shift was almost over.

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.

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) alone. 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).

An employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. Henecke v. Iowa Department of Job Service, 533 N.W.2d 573 (Iowa App. 1995). Use of foul language can alone be a sufficient ground for a misconduct disqualification for unemployment benefits. Warrell v. Iowa Dept. of Job Service, 356 N.W.2d 587 (Iowa Ct. App. 1984). An isolated incident of vulgarity can constitute misconduct and warrant disqualification from unemployment benefits, if it serves to undermine a superior's authority. Deever v. Hawkeye Window Cleaning, Inc. 447 N.W.2d 418 (Iowa Ct. App. 1989).

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's *unexcused* absences were excessive. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32(8). Absences related to issues of personal responsibility such as transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

Continued failure to follow reasonable instructions constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See Woods v. Iowa Department of Job Service, 327 N.W.2d 768, 771 (Iowa 1982). The

administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See Endicott v. Iowa Department of Job Service, 367 N.W.2d 300 (Iowa Ct. App. 1985).

The evidence in the record establishes misconduct in connection with the employment. Regardless of the disagreement regarding compensation for tool loss, Mr. Darland stepped over the line during his tirade on March 24, 2014. Mr. Darland directed profanity and otherwise offensive language at Mark Bina in a direct attack on Mr. Bina's authority, as owner of the business, to direct business operations. That incident was sufficient, alone, to establish misconduct in connection with the employment that disqualifies Mr. Darland for unemployment insurance benefits. The attendance issues establish a second basis for concluding that Mr. Darland engaged in misconduct in connection with the employment. Mr. Darland was late three times for personal reasons. Each late arrival was an unexcused absence under the applicable law. In connection with the final absence date, Mr. Darland gave proper notice that he would be late, then overslept and failed to report for work at all. The late arrival due to the need to care for the sick child was excused tardiness. However, the subsequent failure to appear at all due to oversleeping was an additional unexcused absence. Mr. Darland's unexcused absences were excessive. Finally, the employer presented sufficient evidence to establish a third basis for a finding of misconduct through Mr. Darland's repeated willful refusal to utilize the master mechanic hotline as reasonably directed by the employer.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Darland was discharged for misconduct. Accordingly, Mr. Darland 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.

DECISION:

The April 15, 2014, reference 02, 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 shall not be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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