

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIRK D CASSADY
Claimant

APPEAL NO. 12A-UI-02462-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

INTERNATIONAL PAPER
Employer

**OC: 01/15/12
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Kirk Cassady filed a timely appeal from the February 29, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 28, 2012. Mr. Cassady participated. Nina Brawner represented the employer and presented additional testimony through Randy Schmidt and Brian Burmeister. *Employer's* Exhibits A through I were 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: Kirk Cassady was employed by International Paper as a full-time process team member from 1996 until January 19, 2012, when the employer discharged him for dishonesty. Mr. Cassady's immediate supervisor during the last three years of the employment was Randy Schmidt.

The incident that triggered the discharge occurred on January 11, 2012. On that day, Mr. Cassady was assigned to perform two tasks during a scheduled production shutdown. During the shift, Mr. Schmidt located Mr. Cassady taking a break and asked him questions about how far along he was on the assigned project. Mr. Cassady initially responded with short responses that provided minimal information. Mr. Schmidt asked Mr. Cassady whether he had performed a particular maintenance task. Mr. Cassady said he had completed the task and went into detail about the steps he had taken to lockout and tag out and complete the maintenance task. Mr. Cassady had in fact not completed the task and deliberately misrepresented to Mr. Schmidt that he had done the work.

A short while later, Mr. Schmidt located Mr. Cassady in the vicinity of the piece of equipment Mr. Cassady earlier said had already been attended to. Mr. Schmidt noticed one or more cobwebs that would have been disturbed had Mr. Cassady performed the work earlier. Mr. Schmidt confronted Mr. Cassady about lying to him and Mr. Cassady admitted he had lied to Mr. Schmidt. Mr. Schmidt reported the incident to Brian Burmeister, O.C.C. Coordinator, who was Mr. Schmidt's immediate supervisor. Mr. Burmeister went to speak with Mr. Cassady, who confirmed Mr. Schmidt's version of events. Mr. Cassady added that Mr. Burmeister could "take it however you want." Mr. Burmeister notified Mr. Cassady he was suspended with pay while the employer further considered the matter.

The employer recalled Mr. Cassady to the workplace on January 19, 2012 and discharged him from the employment. In making the decision to discharge Mr. Cassady, the employer considered an incident from October 2011. Mr. Cassady had completed a hot work checklist to clear a contractor to do welding work at the plant. Part of the checklist pertained to whether there was a fire extinguisher in the area to be used in case of fire. Mr. Cassady indicated there was a fire extinguisher in the area when there was not. The employer issued a reprimand in connection with the incident and warned that future similar conduct could result in further disciplinary action.

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).

The circumstances surrounding the January 11 suspension were sufficient to provide notice to Mr. Cassady that his employment was in jeopardy, and to establish a current act for unemployment insurance purposes.

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 evidence in the record establishes that Mr. Cassady was deliberately dishonest with his supervisor on January 11, 2012, when he provided a bogus, detailed statement about performing work he had not in fact performed. There was no legitimate reason for Mr. Cassady to lie to Mr. Schmidt. This incident followed another in October wherein Mr. Cassady had violated safety procedures by authorizing hot work in the plant and documenting the presence of a fire extinguisher without checking to see whether one was in the area. Mr. Cassady's dishonesty on January 11 was in willful and wanton disregard of the employer's interests and violated the standard of conduct that the employer reasonably expected of him. The prior incident in October also indicates a disregard for the employer's interests and violation of standards of conduct the employer reasonably expected of Mr. Cassady. Mr. Cassady's conduct in these two instances substantially undermined the trust relationship between Mr. Cassady and the employer. Given Mr. Cassady's safety-sensitive position, the employer's ability to trust him and his word was critical.

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

DECISION:

The Agency representative's February 29, 2012, 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/kjw