IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MADISON V KEELER
Claimant

TPI IOWA LLC
Employer

APPEAL NO. 14A-UI-11291-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10/05/14
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Madison Keeler filed a timely appeal from the October 24, 2014, reference 01, decision that disqualified her for benefits. After due notice was issued, a hearing was held on November 19, 2014. Ms. Keeler participated. Emily McMahon represented the employer and presented additional testimony through Taylor Johnston. Exhibits A, B, and C 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: Madison Keeler was employed by TPI Iowa, L.L.C. as a full-time manufacturing associate from 2011 until October 9, 2014 when Cleo Boyd, Human Resources Director, discharged her from the employment for directing offensive language at her Team Lead Vinnie Versteegh and Assistant Team Lead Cindy Mickelson. The utterances occurred in the context of a dispute about how to complete paperwork associated with a manufacturing project. The utterances occurred at a time when the Mr. Versteegh was yelling at Ms. Keeler to get paperwork to his work area. Mr. Versteegh was at the time dealing with Ms. Keeler in a heavy handed manner and Ms. Keeler's profanity was in part a response to that treatment. Ms. Keeler told Mr. Versteegh "You're not going to fucking talk to me that way." Ms. Keeler believed that the Team Lead and Assistant Team Lead were indeed addressing the paperwork issue incorrectly and her utterances were first and foremost aimed at conveying that message. Ms. Keeler told the Assistant Team Lead "You don't know what the fuck you are doing." Ms. Keeler followed up the utterance with going to the employer's front office to further address the issue of the paperwork. Mr. Versteegh went along and complained to the human resources department about Ms. Keeler's utterance. The employer questioned all three parties involved in the exchange and also questioned one additional employee who had been in the area at the time of the utterances. That employee confirmed that Ms. Keeler had indeed made the utterance directed at the Assistant Team Lead.

In making the decision to discharge Ms. Keeler from the employment, the employer considered two similar incidents from July, one that resulted in a written reprimand and another that resulted in a verbal coaching.

The employer has a written policy that prohibits vulgar language or gestures in the workplace. Ms. Keeler most recently received a copy of the handbook containing the policy in September 2013. Despite the policy it was commonplace for employees, including supervisors, to use profanity on the production floor. Ms. Keeler's actual supervisor, Dave Lynch, was in the habit of calling Ms. Keller BOB, which stood for big old bitch.

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) 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).

Despite how common profanity was on the production floor, Ms. Keeler knew the employer had a policy that prohibited profanity and had previously been reprimanded for using profanity on the production floor. Ms. Keeler intentionally and repeatedly disregarded the policy. That others did the same on other occasions was no excuse. There were other ways for Ms. Keeler to convey her thoughts to the Team Lead and Assistant Team Lead without use of profanity. Ms. Keeler elected to use language that challenged the authority of both acting supervisors. Ms. Keeler's profanity constituted misconduct in connection with the employment. Ms. Keeler is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits.

DECISION:

The October 24, 2014, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements. The employer's account shall not be charged for benefits.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

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