

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**COURTNEY M PHILLIPS**  
Claimant

**APPEAL NO. 07A-UI-02264-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**REGIS CORP**  
Employer

**OC: 01/28/07 R: 01  
Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

Regis Corp filed a timely appeal from the February 21, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on March 21, 2007. Claimant Courtney Phillips did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Marlene Sartin of Mississippi Labor Consultants represented the employer and presented testimony through Suzy Puffett Young, Manager, and Diane Anderson, Area Supervisor. The administrative law judge received Employer's Exhibits One through 14 into evidence. The administrative law judge took official notice of the Agency's records indicating that no benefits have been disbursed to the claimant in connection with the claim.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies her for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Courtney Phillips was employed by Regis Corp as a full-time stylist from December 2, 2003 until January 25, 2007, when Manager Suzy Puffett Young discharged her based on a variety of concerns.

The final incident that prompted the discharge occurred on January 24, when Ms. Phillips forgot to clock in upon her timely arrival at 9:00 a.m. The employer's written time clock policy required Ms. Phillips to clock in as soon as she reported for her shift and warned that failure to properly use the time clock could result in discipline up to termination of the employment. Ms. Phillips remembered to clock in at 12:13 p.m. When Ms. Phillips clocked out at the end of the day, she answered yes to a computer prompt that asked whether her time clock information for the day was accurate. On January 17, Ms. Puffett Young had reprimanded Ms. Phillips for another failure to clock in at the beginning of her shift.

In making the decision to discharge Ms. Phillips, Ms. Puffett Young considered sundry other concerns. On January 10, 2007, Ms. Phillips left a new stylist alone in the salon while she went shopping. The employer's policy did not prohibit Ms. Phillips from leaving the salon during breaks, but Ms. Puffett Young deemed it inappropriate to leave an inexperienced stylist alone. Ms. Puffett Young learned of Ms. Phillips' absence from the salon when the new stylist called her for assistance with a customer. On January 11 and 22, Ms. Phillips allowed a friend to accompany her to a backroom that functioned as the salon's dispensary. The employer had a written policy that prohibited unauthorized persons in the salon dispensary and Ms. Puffett Young had issued a written reprimand to Ms. Phillips on January 17 regarding the January 11 violation.

While the employer had other concerns the led to the discharge, the employer was primarily concerned with a decrease in Ms. Phillips' production. In the reprimand Ms. Puffett Young issued to Ms. Phillips on January 17, Ms. Puffett listed the following concern first: "Production levels have dropped in the past year." In connection with the January 25 discharge, Ms. Puffett Young prepared two documents. In the Regis Corporation Separation Notice, Ms. Puffett Young indicated the reason for discharge as follows: "Production rate going way down, shows up late and leaves early often." In the "Termination Form," Ms. Puffett Young indicated the reason for discharge as follows:

Production rate (Prebooks to [sic] low), Doesn't do any salon duties (vanity always a mess sick of cleaning it), Was on 30 day probation about not clocking in + out when working. Then the next week was there at 9:00 (weds 24th) but didn't clock in til 12:13. At the end of the day she said the hrs were correct.

#### **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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 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).

It is ironic that the employer's appeal letter listed attendance as the sole basis for the discharge, but that the employer presented minimal evidence at the hearing pertaining to attendance. The evidence in the record is insufficient to establish any unexcused absences. The final incident that prompted the discharge, concerning the failure to clock in on time, represented an instance of ordinary negligence. See 871 IAC 24.32(1)(a). The evidence in the record indicates only one prior similar incident concerning a failure to properly utilize the time clock. If there were more instances, the employer failed to present sufficient evidence to establish them. The evidence indicates that Ms. Phillips was twice negligent in failing to heed the employer's policy of not allowing non-employees into the dispensary area of the salon. Ms. Phillips' act of leaving the new stylist alone in the salon may have represented poor judgment, but the evidence fails to indicate it was more than that. The greater weight of the evidence indicates that the various concerns listed above were not in fact the primary basis for discharge. The greater weight of the evidence indicates that the employer was dissatisfied with Ms. Phillips' ability to generate revenue. The evidence in the record fails to establish that Ms. Phillips' production shortcoming was intentional or the product of recurrent negligence and/or carelessness.

Though it was within the employer's discretion to discharge Ms. Phillips from the employment, the administrative law judge concludes, based on the evidence in the record and application of the appropriate law, that Ms. Phillips was discharged for no disqualifying reason. The evidence in the record does not indicate intentional misconduct or negligence and/or carelessness so

recurrent as to demonstrate a willful or wanton disregard of the interests of the employer. Accordingly, Ms. Phillips is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Phillips.

**DECISION:**

The claims representative's February 21, 2007, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/pjs