

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KARA L LENGEMAN
Claimant

APPEAL NO. 08A-UI-10983-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESSIONS
Employer

**OC: 09/28/08 R: 12
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 13, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on December 9, 2008. Claimant Kara Lengeman participated. Diane Marquette, President and owner, represented the employer.

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: Kara Lengeman was employed by Expressions as a full-time sales clerk from May 22, 2008 until September 25, 2008, when Diane Marquette, President and owner, discharged her from the employment. The employer is a bridal shop. Ms. Lengeman's duties involved collecting order information and clothing measurements from wedding parties and ordering wedding attire for one or more members of the wedding party. Ms. Lengeman was new to the line of work. Ms. Lengeman received informal training from multiple employees at the start of the employment, but did not participate in any formal and/or structured training.

The final incident that prompted the discharge came to the attention of Ms. Marquette on September 25, 2008. Ms. Lengeman had assisted a wedding party with an order for eight outfits for a wedding that was to occur on or about Saturday, September 27, 2008. When the clothing order arrived at the employer's place of business, there were problems with all eight outfits contained in the order. Items were the wrong color and/or wrong size. The employer had to re-order the clothing at the employer's expense and had to pay to have the order expedited. The re-order resulted in a \$900.00 expense to the employer. Ms. Lengeman had placed the order on August 25, 2008. Ms. Lengeman thought she had collected accurate measurements and thought she had accurately placed the order. The wedding party had made changes to the order that may have contributed to the confusion regarding clothing colors.

In making the decision to discharge Ms. Lengeman, Ms. Marquette considered prior errors Ms. Lengeman had made. On September 22 or 23, Ms. Marquette had brought to Ms. Lengeman's attention the number of errors she had made in connection with performing her duties. Prior to that conference, Ms. Lengeman had been unaware that she was making so many errors. Ms. Lengeman explained to Ms. Marquette that she had received training from multiple employees and had thought she was doing the work correctly. Ms. Lengeman requested that the employer provide additional training to assist her in better understanding and better performing the work. Ms. Lengeman did not believe she fully understood when and how to use the various forms the employer used.

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).

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 weight of the evidence indicates that Ms. Lengeman performed the work to the best of her ability, but lacked the skill and/or training necessary to fulfill essential duties of the employment. The evidence is insufficient to establish that Ms. Lengeman knowingly failed to carry out her duties in a responsible fashion. The evidence fails to establish that Ms. Lengeman knew how to do the work correctly, but just performed the work in a negligent or careless manner.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Lengeman was discharged for no disqualifying reason. Accordingly, Ms. Lengeman is eligible for benefits, provided she is otherwise eligible. The employer’s account may be charged for benefits paid to Ms. Lengeman.

DECISION:

The Agency representative’s November 13, 2008, 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/css