

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KATHY STENSLIE

Claimant

APPEAL NO. 21A-UI-08325-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ANNETT HOLDINGS INC

Employer

OC: 01/03/21

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant, Kathy Stenslie, filed a timely appeal from the March 16, 2021, reference 01, decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant was discharged on January 6, 2021 for violation of a known company rule. After due notice was issued, a hearing was held on June 4, 2021. Claimant participated. Erica Nesbit represented the employer. Exhibits 1, 2, 4 through 5, 9 and A 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: The claimant was employed as a full-time Detention Specialist from 2015 until January 6, 2021, when the employer discharged the claimant from the employment. The claimant worked in a high-stress, short-staffed environment. Her duties involved ensuring that the employer's several hundred commercial truck drivers were in transit and generating revenue to the fullest extent. The claimant's job duties included contacting customers who were detaining or delaying AHI drivers. The claimant's job was to prompt those customers to load or unload the driver's freight in a timely manner or face being billed for time the driver could have been in transit. Erica Nesbit, Vice President of Customer Service, became the claimant's supervisor in June 2020.

On January 4, 2021 a recently hired coworker quit the employment. The departing coworker told the employer that the claimant was a negative presence in the workplace and the basis for the quit. The departing coworker alleged the claimant had referred to the Detention Specialist Team Lead as a poor leader. The employer was aware that other employees viewed the claimant as a "toxic" presence in the workplace.

The final incident that triggered the discharge was a complaint that a departing coworker made to the employer about the claimant. The employer had been adding new staff to the department to fulfill the need for additional staff. The employer was having a difficult time keeping new employees and attributed that to the claimant's presence and demeanor. A week before the new coworker quit, the coworker sent a message to Ms. Nesbit and to the hiring manager in which the coworker alleged the claimant spoke poorly of others and had said the Detention Lead did not do a good job. The departing employee described the claimant as toxic and aggressive. The departing employee told the employer she did not enjoy being in the same work environment as the claimant and did not wish to continue. The employer did not inquire further into the details of what had transpired and did not question the claimant prior to discharging the claimant from the employment. The employer was aware that other employees viewed the claimant as a "toxic" presence in the workplace.

In making the decision to discharge the claimant from the employment, the employer considered a written reprimand the employer had issued to the claimant on October 12, 2020. In that instance, the claimant referred to the Detention Lead as a "fucking bitch." The claimant conceded she had uttered the comment in the context of each naming the others work errors. The employer warned the claimant that such language was unacceptable, would not be tolerated, and that the claimant could face discharge from the employment if the conduct continued. There were no other similar incidents.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)(a) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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). 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).

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).

The evidence in the record establishes a discharge for no disqualifying reason. The evidence fails to establish a current act of misconduct. The recently hired employee's decision to quit and her assertion that the quit was based on the claimant being unpleasant to work is not enough to prove misconduct in connection with that incident. The next most recent incident that factored in the discharge occurred in October 2020, more than two months prior to the discharge. The October 2020 vulgar utterance constituted misconduct, but was not a "current act" for purposes of determining the claimant's eligibility for unemployment insurance benefits. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The March 16, 2021, reference 01, decision is reversed. The claimant was discharged on January 6, 2021 for no disqualifying reason. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in black ink on a light gray rectangular background.

James E. Timberland
Administrative Law Judge

September 20, 2021
Decision Dated and Mailed

jet/scn