

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRITTANY J WHITE
Claimant

APPEAL NO. 20A-UI-09930-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 04/19/20
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 5, 2020, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on April 19, 2020 for no disqualifying reason. After due notice was issued, a hearing was held on October 2, 2020. Claimant Brittany White participated personally in the hearing and was represented by Larry White. Ms. White and Mr. White each testified. Jolynn Sinram represented the employer and presented additional testimony through Reina Gonzales. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant (DBRO and KPYX).

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: Brittany White was employed by Casey's Marketing Company as a part-time cashier from 2015 until February 12, 2020, when the employer discharged her from the employment for alleged violation of the employer's honesty and integrity policy. In January 2020, the employer implemented a customer rewards program whereby customers could accrue redeemable rewards points in connection with making purchases. Prior to making the rewards program available to customers, the employer made the program available to employees in December 2019. The employer provided training pertaining to the rewards program through a training video. Ms. White is a disabled person whose disabilities include a cognitive disability. Ms. White did not get the full benefit of the rewards program training due to the training video volume being set too low and due to the training being interrupted.

On February 12, 2020, the employer's corporate office flagged transactions Ms. White had handled on January 31 and February 1, 2020. The employer alleges Ms. White rang up customer transactions and assigned rewards points to her own rewards account. The employer

advises there is a video record of the transactions in question as well associated receipts. The employer provided neither for the appeal hearing. Ms. White denies that she did anything inappropriate in ringing up customer transactions or in connection with rewards program. Leading to the transactions the employer found questionable, Ms. White had been experiencing ongoing issues with her rewards card and the phone number associated with that card subsequent to Ms. White changing her phone number. Ms. White had contacted the Casey's corporate office multiple times for assistance in remedying the issues with her rewards card. Ms. White was allowed to ring up her own transactions if she was the only person at work at the time who knew how to operate the cash register. Ms. White asserts that the transactions the employer found questionable were merely instances wherein she was ringing up her own purchases as she had been authorized to do.

The employer's corporate office had issued a directive to district managers to discharge employees found to have violated the rewards program. On February 12, 2020, District Supervisor Jolynn Sinram directed Ms. White's supervisor, Store Manager Bethany Hinders, to discharge Ms. White from the employment. On that day, Ms. Hinders summoned Ms. White to the workplace and summarily discharged her from the employment. Prior to the concern regarding alleged rewards program irregularities on January 31 and February 1, 2020, the employer had deemed Ms. White a good employee.

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).

The evidence in the record establishes a discharge for no disqualifying reason. The employer presented insufficient evidence to prove misconduct in connection with the employment. The employer elected not to present as evidence at the appeal hearing the purported video surveillance and transaction receipts the employer asserts are the primary proof of misconduct. The employer presented insufficient evidence to rebut Ms. White's testimony that the transactions the employer points to as questionable are merely purchases she made as she was authorized to do. Accordingly, Ms. White is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The August 5, 2020, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The discharge occurred on February 12, 2020, not April 19, 2020. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.



James E. Timberland
Administrative Law Judge

October 6, 2020
Decision Dated and Mailed

jet/sam