

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAYDEN C ADAMS**  
Claimant

**APPEAL NO. 17A-UI-01653-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S RETAIL COMPANY**  
Employer

**OC: 01/22/17**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Jayden Adams filed a timely appeal from the February 10, 2017, reference 01, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on the claims deputy's conclusion that Ms. Adams was discharged on January 27, 2017 for misconduct in connection with the employment. After due notice was issued, a hearing was held on March 7, 2017. Ms. Adams participated. Lorey Thomas represented the employer and presented additional testimony through Sierra Fricke. Exhibits 2 through 5 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: Jayden Adams was employed by Casey's Retail Company as a part-time cook from December 19, 2016 until January 27, 2017, when Lorey Thomas, Store Manager, and Sierra Fricke, Kitchen Manager, discharged her from the employment. Ms. Adams worked at the Casey's store on Iowa Avenue in Marshalltown.

The sole incident that employer asserts as the basis for the discharge occurred on December 31, 2016, less than two weeks after Ms. Adams began her employment. When Ms. Adams left the Casey's store at the end of her shift, she took with her a fountain soda she had poured into a 32-ounce fountain soda cup during her shift. Ms. Adams had not paid the \$1.17 retail price for the fountain soda. Pursuant to the Casey's employee handbook, Ms. Adams was allowed to consume a fountain drink during her shift, but was required to use a special plastic cup and could not take the fountain drink with her when she left the workplace at the end of her shift unless she paid the retail price for the beverage. The employer has employees electronically acknowledge the employee handbook, but does not provide employees with electronic access to the handbook or with their own copy of a handbook. Rather, the employer stores the roughly 120-page handbook in the office and advises

employees they can read it if they want to. The employer did not thoroughly review the policy applicable to fountain pop with Ms. Adams at the start of her employment. Ms. Adams had been unaware that she was violating Casey policy or that she was placing her job in jeopardy on December 31, 2016, when she left the Casey's store at the end of her shift with the fountain beverage.

The employer asserts, implausibly, that on January 26, 2017 a customer complained about a trip the customer had made to the Casey's store on December 31, 2016. The delay between the incident and the complaint would have been 26 days. The employer asserts, implausibly, that the customer complained that several employees had been behind the counter at the Casey's store on December 31 and that one of those employees was not in uniform. The employer asserts, implausibly, that the purported customer complaint from January 26, 2017, prompted the employer to review store surveillance from December 31, 2016. The surveillance records showed Ms. Adams leaving the Casey's store with the fountain beverage in the fountain beverage cup.

### **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). 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 in the record establishes a discharge on January 27, 2017 that was based, purportedly, on a new employee's December 31, 2016 unintentional violation of the employer's fountain beverage policy. Ms. Adams asserted in her appeal letter that the beverage violation was mere pretext for her discharge and the weight of the evidence supports that assertion. Even if Ms. Adams had been aware of the policy, this isolated, minor rule infraction by a new employee would not be sufficient to establish substantial disregard of the employer's interests and, therefore, would not constitute misconduct in connection with the employment that would disqualify Ms. Adams for unemployment insurance benefits.

**DECISION:**

The February 10, 2017, reference 01, decision is reversed. The claimant was discharged on January 27, 2017 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/rvs