

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELISSA A KOPP
Claimant

APPEAL NO. 10A-UI-06393-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MILLARD REFRIGERATED SERVICES INC
Employer

**OC: 03/28/10
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Melissa Kopp filed a timely appeal from the April 19, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on June 16, 2010. Ms. Kopp participated. Tammy Ash, Office Manager, represented the employer.

ISSUE:

Whether Ms. Kopp 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: Melissa Kopp was employed by a Millard Refrigerated Services as a full-time office clerk from 2007 until March 29, 2010, when the employer discharged her for careless and negligent performance of her work duties. Tammy Ash, Office Manager, was Ms. Kopp's immediate supervisor and recommended Ms. Kopp's discharge to the employer's corporate office.

The employer operates a cold storage facility. The employer stores and ships product for Cargill Meat Solutions. As an office clerk, Ms. Kopp's duties centered on accurately processing orders for shipment to Cargill customers and accurately billing for shipped product. Ms. Kopp processed an average of 15 to 20 orders per shift.

The final incident that prompted Ms. Kopp's suspension on March 23, 2010 and her discharge on March 29, 2010 occurred on March 23, 2010. On that day, Ms Kopp failed to note a discrepancy between the number of boxes billed to a customer (677) and the number of boxes that would be shipped to the customer (678). Ms. Kopp would have detected the discrepancy if she had carefully and accurately compared the paperwork she used to process the order. On March 20, 2010, Ms. Kopp had failed to note another discrepancy between the number of boxes billed to a customer and a number of boxes that would be shipped to the customer. In this case, two extra boxes of product would have been sent to the customer without the appropriate charge to the customer. On January 23, 2010, Ms. Kopp failed to process faxed correspondence from Cargill in a timely manner. The correspondence from Cargill had directed

Millard Refrigerated Services to return some boxes of product to Cargill because of a defect in the product. Because Ms. Kopp did not process the correspondence in a timely manner, the defective product was shipped to a customer and Millard Refrigerated Services had to pay the freight cost to return the defective product from the customer to Cargill. Processing the correspondence from Cargill and forwarding appropriate information to the shipping department in a timely manner was part of Ms. Kopp's duties. On September 11, 2009, Ms. Kopp failed to correct a bill/manifest on a shipment order that had to be reduced to comply with Department of Transportation gross motor vehicle weight restrictions. The customer was billed for product that had been cut from the load. On May 2, 2009, Ms. Kopp made an error in the loading sequence for orders to be shipped on the same truck and the employer had to dedicate several man-hours to re-organizing the shipment on the truck. On March 30, 2009 Ms. Kopp failed to note a discrepancy between the number of boxes billed to a customer (733) and the number boxes shipped to customer (738). The customer would have been shipped five boxes of product without charge for the product. The bulk of Ms. Kopp's mistakes were caught by the employer's inventory department. After each of the incidents, Ms. Ash issued a written reprimand to Ms. Kopp.

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 evidence in the record indicates six instances during the last year of the employment in which Ms. Kopp was either careless or negligent in performing her duties. The incidents in question occurred on March 30, 2009, May 2, 2009, September 11, 2009, January 23, 2010, March 20, 2010, and March 23, 2010. Given the employer's testimony that Ms. Kopp might process an average of 15 to 20 shipments per shift, the evidence indicates that Ms. Kopp's six errors occurred in the context of processing about 700 to 1,000 orders. With the exception of the last two errors, the errors did not occur in rapid sequence, but were instead spread out, with a month or months between errors. The incidents of carelessness and/or negligence were not so recurrent as to indicate a willful or wanton disregard of the employer's interests.

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

DECISION:

The Agency representative's April 19, 2010, reference 01, decision is reversed. 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