

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MIRANDA, NOEMI
Claimant

APPEAL NO. 11A-UI-02549-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ARAMARK UNIFORM & CAREER APPAREL
Employer

**OC: 12/05/10
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 February 22, 2011, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on March 23, 2011. Claimant participated. Jeff Royster represented the employer and presented additional testimony through Robyne Holtman. Spanish-English interpreter Isabel Edwards assisted with the hearing. Exhibits One through Ten 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: Noemi Miranda was employed by Aramark Uniform & Career Apparel as a full-time distribution associate from 2004 until December 6, 2010, when Jeff Royster, District Manager, discharged her for allegedly falsifying a weekly time reporting record. Ms. Miranda's native language is Spanish. Ms. Miranda does have some limited English skills. The employer allowed Ms. Miranda four paid personal days per year in addition to regular holidays. When Ms. Miranda took a personal day, she was required to document the time on her weekly time summary and to note that the time was taken as a personal day. Ms. Miranda was aware of this requirement. Time taken as a personal day was not to be charged to the client. Otherwise the time worked would be charged to the client. Time taken as a personal day and noted on the weekly time summary as a personal day would be subtracted from the four paid personal days Ms. Miranda received per year.

In connection with a weekly time summary dated December 3, 2010, Ms. Miranda documented the appropriate number of work hours for the two days she took as personal days, but did not specifically note that these were taken as personal days. The payroll clerk noted the failure to properly document the time and brought the matter to the attention of Mr. Royster on December 6. The payroll clerk did further investigation and found what she thought to be another instance of failure to properly document paid personal days in December 2009. But

Ms. Miranda had actually worked the two days in question and had properly documented those two days.

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 in the record establishes that Ms. Miranda was negligent in failing to properly document the two paid personal days on her weekly time summary dated December 3, 2010. The weight of the evidence does not establish that Ms. Miranda intentionally failed to properly document the time. The weight of the evidence does not establish that Ms. Miranda failed to properly document time in December 2009. The evidence fails to establish an intentional disregard of the employer's interests. The evidence establishes an isolated incident of negligence. The isolated incident of negligence would not constitute misconduct in connection with the employment that would disqualify Ms. Miranda for unemployment insurance benefits. Ms. Miranda is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Miranda.

DECISION:

The Agency representative's February 22, 2011, 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