

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERIN L MACKE

Claimant

APPEAL NO. 16A-UI-12193-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RANDSTAD GENERAL PARTNER US LLC

Employer

OC: 02/28/16

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Erin Macke filed a timely appeal from the November 9, 2016, reference 03, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on an agency conclusion that Ms. Macke was discharged October 24, 2016 for misconduct in connection with the employment. After due notice was issued, a hearing was held on December 1, 2016. Ms. Macke participated. Danielle Wood represented the employer. Exhibits 2 and 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: Erin Macke was employed by Randstad General Partner U.S., L.L.C., as a full-time staffing consultant from August 3, 2016 until October 21, 2016, when Danielle Wood, Senior Branch Manager, discharged her for dishonesty in connection with the employment. Ms. Wood was Ms. Macke's immediate supervisor. Ms. Macke's staffing consultant duties involved retaining client businesses, developing client relationships, recruiting new employees for temporary work assignments, recruiting direct hire employees, and onboarding those employees. The employer's established protocol for onboarding new employees for placement in work assignments included greeting the new employee on the first day of the assignment, introducing the new employee to the client business representative, providing the new employee with a token gift, and then returning to the Randstad office.

The incident that triggered the discharge occurred during the period of October 17-20, 2016. On the morning of October 17, Ms. Macke was supposed to meet a new employee at a client business in connection with the start of the employees work assignment. On October 14, Ms. Macke told the employee that she would be at the client's business on Monday for the employees 8:00 a.m. start. At 7:56 a.m. on Monday, October 17, Ms. Macke sent an email message to the new employee, as follows: "I had something come up and not positive I'll make

it in time for your start. But good luck today and let me know how it went and your thoughts.” The something that had come up was that Ms. Macke was simply running behind in her morning routine and, therefore, was going to be late for the appointment. Ms. Macke was routinely late for work. Ms. Macke did go to the client business location on October 17, but too late to interact with the new employee or the client business representative. Instead, Ms. Macke just confirmed with the client business’ security personnel that the new employee had indeed appeared and was participating in the orientation. Ms. Macke then went to the Randstad office. Ms. Macke arrived at the office sometime between 8:30 a.m. and 9:00 a.m. At that time, Ms. Wood asked Ms. Macke how the new employee’s start had gone. Ms. Macke replied, “Good.” Ms. Wood intentionally withheld information regarding her late arrival at the client’s business and her failure to greet the new employee or introduce him to the client business representative. In Ms. Macke’s words, she did not want to listen to a 15-20 minute lecture from Ms. Wood. On October 20, the new employee sent Ms. Macke an email message asking for login information so that he could submit his payroll timekeeping information. When Ms. Macke did not respond with two and half hours, the new employee sent an email message to Ms. Wood asking for assistance.

The email from the new employee was Ms. Wood’s first hint that the onboarding of the new employee to the work assignment might not have gone according to the established protocol. On the morning of October 21, Ms. Wood questioned Ms. Macke about the matter. Ms. Wood began with an open-ended question, “Tell me about your start on Monday.” Ms. Macke responded that she had gone to the client business, had talked to the new employee, had talked to the manager, and that everything had gone fine. In other words, Ms. Macke knowingly and intentionally lied to the employer about the matter. Ms. Macke then told Ms. Wood she did not know what else Ms. Wood wanted her to tell her. Ms. Wood then directed Ms. Macke to tell her what had actually happened on the Monday morning. Ms. Macke told Ms. Wood that she had been running late, knew she was not going to make it in time, and that is why she had not been honest with Ms. Wood. At the start of Ms. Macke’s employment, Ms. Wood had stressed to Ms. Macke the importance of honesty and integrity in all her dealings with and on behalf of the employer. After the meeting, Ms. Wood consulted with her area vice president and a human resources representative. The group concluded that Ms. Macke’s dishonesty subjected her to discharge from the employment. Ms. Wood then notified Ms. Macke that she was discharged from the employment. At the time of the discharge, Ms. Macke asserted that the whole matter had just been a misunderstanding.

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 that Ms. Macke was knowingly and intentionally dishonest with the employer on October 17 and again on October 21, 2016, regarding the steps she had taken, or failed to take, in connection with the new employee's October 17 onboarding to the new work assignment. Given the nature of the employment, it was especially important that the employer be able to trust Ms. Macke and that Ms. Macke be trustworthy. Ms. Macke's dishonesty was an intentional and substantial disregard of the employer's interests and constituted misconduct in connection with the employment.

Because Ms. Macke was discharged for misconduct in connection with the employment, she is disqualified for benefits until she has worked in and been paid wages for insured work equal to

ten times her weekly benefit amount. Ms. Macke must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The November 9, 2016, reference 03, decision is affirmed. The claimant was discharged for misconduct in connection with the employment. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs