

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JULIE A COOK
Claimant

APPEAL NO. 18A-UI-06877-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PRAIRIE MEADOWS RACETRACK
& CASINO**
Employer

OC: 05/27/18
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 June 20, 2018, 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 Benefits Bureau deputy's conclusion that the claimant was discharged on June 1, 2018 for no disqualifying reason. After due notice was issued, a hearing was held on July 12, 2018. Claimant Julie Cook participated. Pam Anderson, Human Resources Generalist, represented the employer. Ms. Cook waived formal notice of the hearing. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibit 1 into evidence. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

ISSUES:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Julie Cook was employed by Prairie Meadows Racetrack & Casino as a full-time Main Banker from February 28, 2018 until June 1, 2018, when Dawn Brandt, Assistant Director, discharged her from the employment for failure to perform to the employer's satisfaction during a training period. On May 20, 2018, the employer met with Ms. Cook for the purpose of providing a six-week performance evaluation. At that time, the employer noted that Ms. Cook was struggling to master aspects of her Main Banker duties. Prior to the May 20 performance evaluation, the employer had noted cash handling errors on May 2, 6 and 9, 2018. While the employer attributed the errors to lack of attention, Ms. Cook attributed the errors to lack of opportunity to practice aspects of her work duties. Ms. Cook performed her work duties to the best of her

ability. On May 14, 2018, the employer issued disciplinary action based on the cash handling errors. The employer alleges issues with Ms. Cook's attitude and her willingness to take direction, but Ms. Cook was open to taking direction. The employer alleges that Ms. Cook took an unauthorized break, but cannot provide a date for the alleged unauthorized break.

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 Iowa Administrative Code rule 871-24.32(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 Iowa Administrative Code rule 871-24.32(4).

The weight of the evidence in the record establishes a discharge on June 1, 2018 for no disqualifying reason. The employer failed to present testimony from anyone with personal knowledge of the matters that factored in the discharge. The weight of the evidence establishes that the cash handling errors that served as the primary basis for the discharge arose during a period when Ms. Cook was still learning the Main Banker duties. Ms. Cook performed the work to the best of her ability and the errors in question were not evidence of a disregard of the employer’s interests. Ms. Cook’s inability to perform to the employer’s satisfaction during the training period would not constitute misconduct in connection with the employment. The employer alleges attitude issues, but the weight of the evidence does not support the allegation. The employer alleges that Ms. Cook took an unauthorized break, but presented insufficient evidence to prove a break violation. Even if the evidence had established a pattern of careless and/or negligent cash handling indicating a disregard for the employer’s interests, the evidence would not have established a discharge based on a current act. The most recent cash handling errors that factored in the discharge occurred on May 9, 2018 and came to the employer’s attention on that date. The employer addressed those cash handling errors and others with Ms. Cook on May 14, 2018 and May 20, 2018. A June 1, 2018 discharge based on the same incidents would include unreasonable delay on the part of the employer.

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

DECISION:

The June 20, 2018, reference 01, decision is affirmed. The claimant was discharged on June 1, 2018 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