

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

THERESA R BRIMMER
Claimant

APPEAL NO. 18A-UI-09241-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOODWILL INDUSTRIES OF NE IA INC
Employer

OC: 08/05/18
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Theresa Brimmer filed a timely appeal from the August 29, 2018, reference 01, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on the Benefits Bureau deputy's conclusion that Ms. Brimmer was discharged on June 26, 2018, for wanton carelessness in connection with the employment. After due notice was issued, a hearing was held on September 24, 2018. Ms. Brimmer participated. Thomas Kuiper of Equifax represented the employer and presented testimony through Matthew Bormann. Exhibit A was received into evidence. The administrative law judge took official notice of the documents submitted for and generated in connection with the fact-finding interview.

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: Theresa Brimmer was employed by Goodwill Industries of Northeast Iowa, Inc., as a part-time sales associate from July 2017 until June 26, 2018, when Matthew Bormann, Store Manager, discharged her from the employment for cash register shortages. The shortages were based on Ms. Brimmer's occasional mistakes in operating the cash register and were not based on theft. Mr. Bormann was Ms. Brimmer's immediate supervisor. At the start of the employment, the employer trained Ms. Brimmer on how to operate the employer's cash register. The employer retrained Ms. Brimmer on cash register operation following one or more cash drawer shortages attributable to Ms. Brimmer's operation of the cash register. Ms. Brimmer usually worked about 28 hours, or four shifts per week. Ms. Brimmer usually worked the 2:30 p.m. to 9:30 p.m. shift. During her shift, Ms. Brimmer would ring up 80 to 100 customers on average.

The final incident that triggered the discharge occurred on June 23, 2018, when Ms. Brimmer failed to collect the full amount due from a customer in connection with a sales transaction. The payment received was \$9.12 short of the \$23.36 due. The customer used a credit card to pay for the her merchandise, but the credit card only covered \$14.24 of \$23.36 transaction total, leaving \$9.12 due on the transaction. The register did not print a receipt. Ms. Brimmer did not understand what had gone wrong with the transaction. As Ms. Brimmer was in her state of

bewilderment, the customer left with the merchandise. Though Mr. Bormann was at the store, Ms. Brimmer did not summon him for assistance. When Ms. Brimmer attempted to ring up the next customer's transaction, the cash register balked. Ms. Brimmer asked a full-time sales associate, Natalie Brimeyer, for assistance. Ms. Brimmer then closed out the problematic transaction, leaving the cash register \$9.12 short.

The employer's decision to discharge Ms. Brimmer after the June 23, 2018 incident followed prior cash register shortages and associated reprimands. On June 12, 2018, sales associates Pam Thomas and Kim Boyes conducted the night drawer count and found that the cash register drawer Ms. Brimmer operated that day to be \$19.25 short. Neither the employer nor Ms. Brimmer could determine what led to the shortage. On October 10, 2017, Mr. Bormann issued a written warning to Ms. Brimmer in connection with her cash register being short \$9.75. On January 18, 2018, Mr. Bormann briefly suspended Ms. Brimmer from work in connection with a \$20.00 cash register shortage. On May 11, 2018, Mr. Bormann again briefly suspended Ms. Brimmer in connection with an \$18.96 cash register shortage.

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 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).

The weight evidence in the record establishes a discharge for no disqualifying reason. Ms. Brimmer was responsible for a high volume of cash register transactions, 80 to 100 per shift, four shifts per week. That translates to 320 to 400 transactions per week, roughly 1,280 to 1,600 transactions per month, and roughly 11,520 to 14,400 during the period of October 10, 2018 through June 23, 2018. In the context of ringing up thousands of transactions, Ms. Brimmer made a mistake in connection with five transactions. That is a remarkable record of nearly 100 percent accuracy. The five problematic transactions were spaced out over a period of 36 weeks. The pattern demonstrates that Ms. Brimmer performed her work duties in good faith and to the best of her ability, but made an occasional error. The pattern does not establish an intentional or substantial disregard for the interests of the employer. Ms. Brimmer is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

DECISION:

The August 29, 2018, reference 01, decision is reversed. The claimant was discharged on June 26, 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