

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VICTORIA M STOVER
Claimant

APPEAL NO. 14A-UI-10083-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CHILD CARE COUNCIL/BUCHANAN CTY
KIDSVILLE**
Employer

OC: 08/31/14
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 September 18, 2014, 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 an agency conclusion that the claimant had been discharged for no disqualifying reason. After due notice was issued, a hearing was held on October 16, 2014. Claimant Victoria Stover participated. Keri Griswold represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits One through Seven and A, B and C 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: Victoria Stover was employed by Child Care Council of Buchanan County, doing business as Kidsville, as a full-time Kitchen Manager from 2012 until September 3, 2014, when the employer discharged her from the employment for alleged insubordination. Ms. Stover had started the employment as the Kitchen Manager. To obtain the position of Kitchen Manager, Ms. Stover had responded to an advertisement indicating that the employer was seeking a Kitchen Manager. The ad indicated that the duties of the Kitchen Manager would include planning and preparing meals, dishes, ordering food and supplies, cleaning the kitchen, completing food program training and completing assigned paperwork for the Child and Adult Care Food Program.

Ms. Stover's immediate supervisor until July 2014, was Louanne Gates, Director. In January 2014, Ms. Stover and Ms. Gates executed a "New Employee Orientation Checklist" that identified Ms. Stover's position as Kitchen Manager. In May 2014, Ms. Stover and Ms. Gates signed an offer letter indicating that Ms. Stover was taking on the position of Office Assistant in

addition to her Kitchen Manager duties. The offer letter indicated Ms. Stover's hourly wage in the combined position would be \$12.25 per hour. The employer's board of directors approved the change in status and pay.

On July 18, 2014, Keri Griswold became the new Director and Ms. Stover's immediate supervisor. Ms. Griswold was new to the employer and relied heavily on Ms. Stover's assistance. Ms. Griswold had taken on some additional duties in connection with the change in personnel. Ms. Griswold initially assigned additional duties to Ms. Stover that included some duties that the employees, including Ms. Stover, perceived as supervisory in nature. When the other employees complained, Ms. Griswold and the agency's board took away those particular new duties.

On August 4, 2014, Ms. Stover sent an email to the employer indicating that she felt it best to return to the kitchen as Kitchen Manager and to focus on those duties. Ms. Stover indicated that the employer had added an on-site supervisor and that that had resulted in duties that had recently been assigned to Ms. Stover had been moved to the new on-site supervisor. Ms. Stover indicated that she would decide at a later date whether she wished to apply for an assistant director position when the employer posted that position. Ms. Stover indicated that she would no longer be performing the Maggey program duties and would pass necessary paperwork along to Ms. Griswold or whoever else had taken on responsibility for client charges and billing.

Ms. Blasberg did not respond to Ms. Stover's email message until August 18, 2014. At that time, Ms. Blasberg told Ms. Stover that her Kitchen Manager position was being eliminated and that Ms. Stover's pay would be adjusted. Ms. Blasberg indicated the Board would be notifying Ms. Stover at a later date what her new pay would be. The implication was that Ms. Stover's pay would be decreased. Ms. Blasberg indicated that in the meantime, Ms. Stover was to continue to perform all of the duties has been assigned to her. Ms. Stover became concerned that errors committed by the new Director and others in billing and other financial matters placed Ms. Stover at risk of being accused of misconduct in connection with those aspects of her duties. Ms. Stover notified the employer that she would no longer perform those duties. The employer concluded that Ms. Stover was being insubordinate and elected to discharge her from the employment.

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.

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).

Continued failure to follow reasonable instructions constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See Woods v. Iowa Department of Job Service, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See Endicott v. Iowa Department of Job Service, 367 N.W.2d 300 (Iowa Ct. App. 1985).

The evidence in the record establishes a discharge that occurred in the context of significant agency change and reorganization. The employer reasonably expected Ms. Stover to continue to perform the duties that she had taken on and had agreed to perform. Ms. Stover had

legitimate concerns about the conditions under which she was to perform some of those assigned duties. While the evidence indicates that Ms. Stover was not fully pliable with regard to the ongoing changes the employer was making to her employment, the evidence fails to establish conduct on the part of Ms. Stover that rises to the level of insubordination within the meaning of the law. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that the claimant was discharged for no disqualifying reason. Accordingly, the claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The claims deputy's September 18, 2014, 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