

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTHONY D WEBB
Claimant

APPEAL NO. 12A-UI-03943-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AUTOZONERS LLC
Employer

OC: 03/04/12
Claimant: Respondent (1)

Section 96.5(2)(a) – Discharge for Misconduct
871 IAC 24.32(8) – Current Act Requirement

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 4, 2012, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 1, 2012. Claimant Anthony Webb participated and presented additional testimony through Brandon Carpe. Larry Zimmerman, regional loss prevention officer, represented the employer. Exhibits One, Two, and Three 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: Anthony Webb was employed by Autozoners, L.L.C., as a full-time commercial sales manager from 2010 until March 6, 2012, when the employer discharged him for providing an unauthorized discount to another employee. The conduct that triggered the discharge occurred on January 19, 2012. The transaction was automatically flagged by the employer's computer system and made part of a report generated for the employer's review on Sunday, January 22, 2012. The management staff waited until sometime between February 6 and 9 to notify Larry Zimmerman, regional loss prevention manager, of the matter and to start an investigation. Mr. Zimmerman reviewed documentation concerning the unauthorized discount and documentation giving rise to additional documentation concerns and then interviewed Mr. Webb on February 9, 2012. Mr. Webb continued to perform his regular duties until March 6, 2012, at which time the employer discharged him based on the January 19, 2012 unauthorized discount.

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 evidence in the record fails to establish a current act of misconduct. The evidence indicates that the conduct that triggered the discharge occurred on January 19, came to the employer's attention no later than January 21, was not investigated until February 6-9, and did not lead to discharge until March 6, 2012. The employer has failed to provide a reasonable basis for the multiple periods of delay. In the absence of a current act, the administrative law judge concludes that Mr. Webb was discharged for no disqualifying reason. Because there was no current act, the administrative law judge need not determine whether the conduct in question constituted misconduct. Mr. Webb is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Webb.

DECISION:

The Agency representative's April 4, 2012, reference 01, decision is affirmed. The discharge was not based on a current act. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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