

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AARON DODD

Claimant

APPEAL NO. 14A-UI-03437-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HELZBERG'S DIAMOND SHOPS INC

Employer

OC: 03/09/14

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Aaron Dodd filed a timely appeal from the March 26, 2014, reference 01, decision that disqualified him for benefits. After due notice was issued, a hearing was held on April 22, 2014. Mr. Dodd participated. Tim Quass represented the employer.

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: Aaron Dodd was employed by Helzberg's Diamond Shops as a full-time store manager until February 17, 2014, when Tim Quass, Regional Director, discharged him from the employment. Mr. Dodd had started with the company in April 2012 as an assistant store manager and had become the store manager of the employer Sioux City store in October 2012. Mr. Dodd supervised several employees. Mr. Dodd was responsible for adhering to and enforcing the employer's policies. The employer has all employees read the employer's loss prevention manual on an annual basis and sign to acknowledge their obligation to follow the manual. The employer also has employees watch loss prevention videos twice yearly. The loss prevention materials review the employer's policies reviewed include those pertaining to employee purchases and handling any other type of sales transaction. Mr. Dodd was responsible for reviewing these materials with all of his subordinates.

The incident that triggered the discharge concerned Mr. Dodd's involvement in a sales transaction on January 29, 2014 and came to the attention of the employer's loss prevention manager and Mr. Quass on January 6, 2014. The loss prevention manager conducted an initial investigation. Mr. Quass later interviewed Ms. Spence and Mr. Dodd. On January 29, 2014, Mr. Dodd authorized an employee purchase made by employee Brittney Spence. Mr. Dodd rang up the purchase. There were several irregularities associated with the purchase. In connection with the purchase, Ms. Spence facilitated a credit application purportedly on behalf of her nephew, who was not present in the Sioux City store. Ms. Spence took the credit

application information over the phone. The credit application resulted in the nephew being approved for \$4,000.00 to \$5,000.00 of credit with Helzberg's. Mr. Dodd was aware of the particulars attending the credit application as the credit application was being made and allowed the process to proceed so that his store could gain credit for the credit application and a jewelry sale. The credit application was made so that Ms. Spence and her sister could purchase some jewelry. The retail value of the purchased items was \$7,000.00. Ms. Spence used her 50 percent employee discount to purchase the items for \$3,500.00. The items were later delivered to another Helzberg's store. The employer's written policies required that a credit applicant be present in the store at the time the application was made. The employer's written policies required that the application be made in connection with a discussion with the credit applicant regarding the applicant's desire to purchase jewelry from Helzberg's. The employer's written policies required that any employee who wished to purchase items jointly with a nonemployee first make the purchase in the employee's name in a manner that obligated the employee to pay for the item in full and that the employee then collect on their own whatever money the employee needed to recover from others involved in the purchase. Mr. Dodd was fully aware that Ms. Spence was not paying for the item and that entire balance due on the item was to be covered, at least initially, by the credit that Ms. Spence and her sister had obtained on behalf of Ms. Spence's nephew.

Another factor that the employer considered in making the decision to discharge Mr. Dodd from the employment was his practice of leaving a single employee in the store while he or others stepped out for a smoke break, to get food, or to run errands. The employer policies required, for safety and security purposes, that the store be staffed by two employees at all times. Mr. Dodd was aware of the policy.

The employer also considered additional policy violations when making the decision to discharge Mr. Dodd from the employment. Mr. Dodd had allowed female employees to wear jewelry belonging to the store. The employer counseled Mr. Dodd after one such employee left the store with the jewelry still in her possession.

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).

Mr. Dodd professes ignorance of written policies that he was charged with periodically reviewing with employees and enforcing on the employer's behalf. Mr. Dodd asserts that he adhered to the practices of his predecessor, even though those practices did not comply with the employer's written policies Mr. Dodd was charged with enforcing, and even though Mr. Dodd was store manager for 18 months. The evidence indicates that Mr. Dodd was negligent in failing to abide by and enforce multiple employer policies on multiple occasions. He was negligent in several respects in connection with his handling of Ms. Spence's jewelry purchase. He had previously been negligent in failing to properly staff the store to ensure safety of employees and security of the employer's inventory. He had previously been negligent in allowing store employees to make use of the employer's inventory without purchasing items, which led to an incident wherein an employee left the store with the employer's property in her possession. The evidence is sufficient to establish a pattern indicating a willful and wanton disregard of the employer's policies and interests. Given the nature of the Mr. Dodd's position and the employer's need to investigate the matter that came to the employer's attention on February 6, 2014, the administrative law judge concludes that the employer did not unreasonably delay in placing Mr. Dodd on notice that the final incident could or would lead to his discharge from the employment. The evidence establishes a discharge based on a current act.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Dodd was discharged for misconduct. Accordingly, Mr. Dodd is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits.

DECISION:

The claims deputy's March 26, 2014, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The employer's account shall not be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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