**IOWA WORKFORCE DEVELOPMENT**
**UNEMPLOYMENT INSURANCE APPEALS**

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

**PATRICIA L SPORTS**
Claimant

**IOWA PREMIUM BEEF LLC**
Employer

**APPEAL NO. 14A-UI-12365-JTT**

**ADMINISTRATIVE LAW JUDGE DECISION**

**OC: 10/05/14**
**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 October 27, 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. After due notice was issued, a hearing was held on January 9, 2015. Claimant participated. Maria Hodge represented the employer and presented additional testimony through Kim Supercynski and Russell Wright. Exhibits One through Eight, 11 through 16, 18, 19, A, G, H, K, L, M, P through W, and AA and Department Exhibit D-1 were received into evidence. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant.

**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: Patricia Sports was employed by Iowa Premium Beef, L.L.C. as a full-time administrative assistant from December 2013 until October 8, 2014 when the employer discharged her from the employment for allegedly shredding an applicant's application for employment and for alleged insubordination. The employer is a start-up beef processor. Ms. Sports was one of the employer's first hires and was instrumental in the successful launch of the company. The employer commenced production on October 24, 2014. Ms. Sports holds multiple academic degrees that include a Master of Business Administration degree. Ms. Sports' duties and place in the management hierarchy evolved substantially as the employer's business and business needs evolved. Until May 2014 Ms. Sports' immediate supervisors had been two of the four vice presidents. The company did not have a president. In May 2014 Maria Hodge joined the employer as Human Resources Director and became Ms. Sports' immediate supervisor. Ms. Sports relatively long tenure with the company and her jack-of-all-trades role early on in the company's evolution led sometimes to interpersonal conflict with newer members of the company including Ms. Hodge and Kim Supercynski, who entered into an independent contractor/consultant relationship with the company in April 2014 to assist with financial matters. Those newer members of the company often perceived Ms. Hodge to be overstepping her authority, whereas Ms. Hodge perceived her own conduct as taking care of the business.

The final incident that triggered the discharge concerned an allegation by a job applicant, George Keckler, that Ms. Sports had shredded his employment application. Ms. Sports had in fact not shredded the application, had not been in human resources matters at the time Mr. Keckler had submitted his application, and had not had any contact with Mr. Keckler at the workplace. On October 6, 2014 Mr. Keckler alleged that Ms. Hodge had told him that the company was not going to hire him, that his application from months earlier had been destroyed, and that he should go to the company once production started to further raise his concern about not being hired. Mr. Keckler had imposed himself upon Ms. Sports in July 2014 as she was doing some personal shopping at the local Wal-Mart. Mr. Keckler recognized Ms. Sports as someone who worked at Iowa Premium Beef. Ms. Sports deferred answering Mr. Keckler's questions about prospective employment by directing him to contact the human resource personnel. Ms. Sports otherwise engaged in small talk with Mr. Keckler and his spouse to move on from the awkward social situation. When Mr. Keckler again imposed himself upon Ms. Sports later during her shopping venture, Mr. Keckler's wife apologized for Mr. Keckler's obsessive nature and Ms. Sports abandoned her shopping venture.

The employer considered other prior incidents in making the decision to end the employment but each of those concerned instances where someone thought that Ms. Sports had overstepped her authority or been unnecessary fastidious about a business matter.

In connection with ending Ms. Sports employment, the employer offered Ms. Sports a written separation agreement wherein the employer deemed the termination "amicable" and wherein the employer offered Ms. Sports a $5000 "severance allowance" in exchange for her waiver of any cause of action in connection with the separation and agreement to abide by a number of provisions protecting the employer's business.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 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).

The weight of the evidence in the record fails to establish misconduct in connection with the employment. The employer has presented insufficient evidence, and insufficiently direct and satisfactory evidence, to provide by a preponderance of the evidence that Ms. Sports shredded Mr. Keckler's application, that she told him she had shred it, that she directed him to challenge the employer regarding his failure to obtain work through the employer. The employer did not present testimony from Mr. Keckler or others in possession of personal knowledge regarding the matter. The weight of the evidence indicates that the employer's evolving business structure predictably created interpersonal tensions between Ms. Sports and others. The weight of the evidence fails to establish a single instance of Ms. Sports acting with willful or wanton disregard of the employer's interests or in a careless or negligent manner. The fact that Ms. Sports had a different business perspective on matters is not evidence of misconduct. That the employer was willing to extend a $5000 settlement amount, to get Ms. Sports' waiver of a cause of action against the employer in connection with her separation from the employment, further supports the conclusion that the discharge was based on matters other than misconduct.

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

**DECISION:**

The October 27, 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.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

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