

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ALEXIS T CHUBB

Claimant

APPEAL NO. 21A-UI-00735-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BARRY GREEN AGENCY LLC

Employer

OC: 08/16/20

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant, Alexis Chubb, filed a timely appeal from the November 18, 2020, reference 01, decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant was discharged on August 19, 2020 for conduct not in the best interest of the employer. After due notice was issued, a hearing was held on February 10, 2021. The claimant participated. Barry Green represented the employer. The administrative law judge took official notice of the fact-finding materials.

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: Barry Green owns and operates a State Farm Insurance agency in Indianola. Alexis Chubb was employed as a full-time customer service/account representative from July 2019 until August 19, 2020, when the employer discharged her from the employment. The employer's decision to discharge the claimant followed the employer's August 11, 2020 discovery that Ms. Chubb had marked herself off for several upcoming days on the online absence calendar. Ms. Chubb had planned vacations to Arizona and to Las Vegas and had marked herself off for August 12, 13, 14, 17, 18, 21, 24, 25, 28 and 31, as well as September 1, 2 and 3. The employer's established practice concerning time off requests called for employees to enter their requested days on the leave calendar for the employer's consideration. The employer would then review the dates requested and delete those that the employer did not approve. This would usually involve discussion between Ms. Chubb and Mr. Green. Mr. Green had undergone heart surgery in July 2020 and subsequently in the office intermittently. Ms. Green expected Ms. Chubb and other employees to perform their regular duties and maintain office operations during the period when he needed to scale back his work activities to attend to his office time to address his recovery from heart surgery. Mr. Green perceived Ms. Chubb's significant number of impending proposed days off, and her failure to bring those to his attention

despite contact as recent as August 10, 2020, as deceptive, disloyal behavior that was contrary to his business interests.

Earlier in the year Mr. Green had staff commence working remotely from home due to the COVID-19 pandemic. This lasted for eight weeks. Mr. Green recalled the staff to the office effective May 18, 2020. Upon her return, Ms. Chubb expressed concern about the safety or returning to the office so soon. Ms. Chubb had an elderly family at home and was concerned about exposing that person to COVID-19. Mr. Green perceived Ms. Chubb's concerns as poor attitude. This and other concerns led to Mr. Green issuing a written counseling document on June 30, 2020 in which Mr. Green addressed perceived issues with attitude, respect, commitment and focus. Mr. Green advised Ms. Chubb that the document was not disciplinary in nature, but asked her to sign to acknowledge the discussion. Ms. Chubb declined to sign the document.

The concern and discussion on August 11, 2020 concerning the leave calendar included discussion and disagreement regarding the amount of leave Ms. Chubb had available to use. When Mr. Green recalled staff to the office in May 2020, he announced that he was resetting available leave to 12 days off in recognition of Ms. Chubb's performance and production during the remote work period. However, on August 11, Mr. Green told Ms. Chubb that she had only seven days of available leave.

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 evidence in the record establishes a discharge for no disqualifying reason. The employer was legitimately concerned about Ms. Chubb's failure to mention the significant number of days she had scheduled herself off in August and early September. Though Ms. Chubb's conduct in that matter demonstrated poor judgment, it did not rise to the level of willful and wanton disregard of the employer's interests and was not misconduct in connection with the employment. The employer's expectations included expectations that Ms. Chubb satisfy such intangible, subjective requirements as those the employer labeled attitude, respect, commitment and focus. Ms. Chubb's inability to meet such expectations would not constitute misconduct in connection with the employment. The employer referenced sundry other generalized concerns, but walked those back when asked for particulars. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The November 18, 2020, reference 01, decision is reversed. The claimant was discharged on August 19, 2020 for no disqualifying reason. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.

A rectangular box containing a handwritten signature in black ink that reads "James E. Timberland".

James E. Timberland
Administrative Law Judge

February 26, 2021
Decision Dated and Mailed

jet/mh