

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERENCE D ADAMS
Claimant

APPEAL NO. 07A-UI-11220-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCHULTZE, RICHARD M ET AL
BEST BUY STORES LP
Employer

OC: 11/04/07 R: 03
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

Best Buy Stores filed a timely appeal from the November 28, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on December 19, 2007. Claimant Terence Adams participated. Lucy Reed of Unemployment Services represented the employer and presented testimony from Shasta Claas, Operations Manager. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits One through Seven into evidence.

ISSUES:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies him for unemployment insurance benefits.

Whether the claimant's discharge was based on a "current act."

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Terence Adams was employed by Best Buy Stores as a full-time home theater specialist from October 12, 2005 until November 2, 2007, when Matt Cairy, Customer Experience Manager, discharged him.

The incident that prompted the discharge occurred on October 16, 2007. A customer contacted the store to complain that Mr. Adams had offered to perform a repair for the customer without charging the customer the applicable fee, but that Mr. Adams had requested a \$10.00 gratuity or that the customer buy Mr. Adams lunch. The employer's established policy prohibited performing work without charging the customer the applicable fee. Mr. Adams was aware of the policy. The employer investigated the matter the same day and found a repair project in Mr. Adams' work area that corroborated the customer's story. The employer did not immediately discuss the matter with Mr. Adams. On October 25, Senior Home Theater Supervisor Jeremy Morris had Mr. Adams draft a statement concerning his involvement in the incident. In the statement, Mr. Adams indicated that he had performed the work for the

customer without charge “to be nice,” but had not requested any compensation. Mr. Adams indicated in his statement that the customer had offered to buy him lunch.

Though the incident occurred on October 16, the employer did not tell Mr. Adams that the incident subjected him to possible discharge until the actual discharge date, November 2, 2007. The employer concluded its investigation on October 16. The employer had Mr. Adams write his statement on October 25. On October 26, Customer Experience Manager Matt Cairy and Home Theater Supervisor Taylor Nace prepared written statements about their involvement in the incident on October 16. At some point after the actual incident, Mr. Cairy referred the matter to the employer’s corporate human resources department, which reviewed the matter and decided to terminate 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.

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 administrative law judge notes that the employer presented no testimony from individuals with first-hand knowledge of the incident that prompted the discharge.

The greater weight of the evidence fails to establish a “current act.” See 871 IAC 24.32(8). The evidence indicates that the incident came to the employer’s attention on October 16, 2007 and that the employer concluded its actual investigation of the matter the same day. The weight of the evidence indicates that Mr. Adams’ October 25 statement, and Mr. Cairy’s and Mr. Nace’s statements of October 26, were prepared at the direction of the employer’s human resources department, to package the matter for that department’s review. The evidence indicates a 17-day lapse between the date the conduct came to the employer’s attention and the day the employer notified Mr. Adams that the conduct subjected him to possible or actual discharge. Mr. Adams was not discharged for a “current act.” Accordingly, the discharge cannot serve as a basis for disqualifying him for unemployment insurance benefits and the administrative law judge need not consider whether the conduct amounted to misconduct. See 871 IAC 24.32(8).

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Adams was discharged for no disqualifying reason. Accordingly, Mr. Adams is eligible for benefits, provided he is otherwise eligible. The employer’s account may be charged for benefits paid to Mr. Adams.

DECISION:

The Agency representative’s November 28, 2007, reference 01, decision is affirmed. 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

jet/css