

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAKEESHA C COLLINS

Claimant

APPEAL NO. 07A-UI-10666-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**DPM MERLE HAY LLC
POPEYES CHICKEN & BISCUITS**

Employer

**OC: 10/21/07 R: 02
Claimant: Respondent (1)**

Section 96.5(2(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

DPM Merle Hay, L.L.C., doing business as Popeye's Chicken & Biscuits, filed a timely appeal from the November 8, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on December 4, 2007. Claimant Lakeesha Collins participated. Greg Emery, Area Supervisor, represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits Two and Three into evidence.

ISSUE:

Whether the claimant voluntarily quit or was discharged from the employment. The administrative law judge concludes that Ms. Collins was discharged.

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Lakeesha Collins was employed by Popeye's Chicken & Biscuits as a full-time Assistant Manager until October 6, 2007. Ms. Collins had commenced her employment on March 5, 2006 as a part-time cashier/packager and had been promoted to full-time Assistant Manager on April 5, 2007. Ms. Collins' immediate supervisor was Shawn Doyle, General Manager. Ms. Collins worked at the employer's Merle Hay Mall store.

On October 6, Ms. Collins learned from an hourly employee that the employer was planning to issue her a written reprimand. The hourly employee had learned of the impending reprimand from the brother of Area Manager Greg Emery. Mr. Emery's brother worked for the employer as a cook. When Ms. Collins learned of the impending reprimand, she approached her immediate supervisor, General Manager Shawn Doyle, and asked whether there was any truth to what she had heard. Mr. Doyle denied knowledge of any impending reprimand. Area Manager Greg Emery had in fact prepared a written reprimand for Ms. Collins. Mr. Emery had also told his

brother, an hourly employee, about his plan to reprimand Ms. Collins. An hourly employee, most likely Mr. Emery's brother, contacted Mr. Emery and advised that Ms. Collins had heard about the impending reprimand. Mr. Emery went to the workplace and met with General Manager Shawn Doyle. Mr. Emery then approached Ms. Collins in the presence of the hourly employees, handed her the written reprimand, and told her that she had to sign the reprimand or go home. Ms. Collins telephoned a family member, who advised her against signing the reprimand without consulting with an attorney. Ms. Collins told Mr. Emery that she wanted to have an attorney review the reprimand before she signed it. Mr. Emery told Ms. Collins that she either signed the reprimand then and there or was fired. Ms. Collins indicated she would not sign then and there. Mr. Emery told Ms. Collins she was fired. Ms. Collins returned her keys and exited the workplace.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether Ms. Collins quit or was discharged from the employment. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

The greater weight of the evidence indicates that Ms. Collins did not evidence an intention to quit the employment. The evidence indicates instead that Mr. Emery discharged Ms. Collins on October 6, 2007 because she would not sign a written reprimand.

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).

Continued failure to follow reasonable instructions constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See Woods v. Iowa Department of Job Service, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See Endicott v. Iowa Department of Job Service, 367 N.W.2d 300 (Iowa Ct. App. 1985).

The evidence in the record indicates that the employer created a situation on October 6, 2007, that significantly undermined Ms. Collins' trust of the employer, and which would have caused a reasonable person to be wary of signing the written reprimand. Ordinarily, an employer's request that an employee acknowledge receipt of a written warning would be reasonable. The circumstances under which the warning was issued in this case distinguish it from the ordinary issuance of a reprimand. While the employer's request that Ms. Collins sign the warning may have been reasonable, Ms. Collins' hesitation or qualified refusal was also reasonable under the circumstances. Even if Ms. Collins' refusal to sign the warning had been unreasonable, the evidence in the record does not establish substantial misconduct in connection with this incident that would disqualify Ms. Collins for benefits. Nor does the evidence establish an ongoing refusal to comply with the employer's directives.

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

DECISION:

The Agency representative's November 8, 2007, 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw