

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**KATHERINE L KNUTSON**  
Claimant

**APPEAL NO. 21A-UI-08710-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 01/31/21  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the March 19, 2021, 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 February 2, 2021 for misconduct in connection with the employment. After due notice was issued, a hearing was held on June 10, 2021. Claimant participated. Frankie Patterson represented the employer and presented testimony through Sara Kasemeier and Matt Burke.

**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: The claimant was employed by Hy-Vee in Dubuque 2015 until February 2, 2021, when the employer discharged her from the employment. In 2018, the claimant became a full-time assistant manager, a position she held until the end of the employment. Toward the end of the employment, the claimant's duties centered on the front end of the store. The claimant was responsible for supervising and assisting cashiers and to otherwise ensure that customers received appropriate service. Store Manager Matt Burke was the claimant's direct supervisor. Eliza Cole, Manager of Perishables, also had authority to direct the claimant's work.

The final incident that triggered the discharge occurred on the morning of Sunday, January 24, 2021, when the claimant spent 30 minutes stationed at a computer behind the customer service desk at the front of the store. The claimant asserts she was working on staffing issues in the context of inclement weather that impacted cashier staffing. A customer service clerk later alleged to another supervisor that the claimant told the clerk that she was at the computer writing a letter to Hy-Vee's corporate office to complain about Ms. Cole. There was ongoing interpersonal strife between the claimant and Ms. Cole to which both contributed. The claimant felt persecuted by Ms. Cole. The claimant did not appreciate Ms. Cole asking questions about the claimant's prescription psychotropic medications. Nor did the claimant appreciate Ms. Cole

making disparaging remarks to other staff about the claimant's mental health and the impact of the claimant's mental health on her ability to perform her work duties. The employer discharged the claimant from the employment after the claimant's alleged utterance made its way to Sara Kasemeier, Human Resources Manager. The employer was unable to locate in its computer records the correspondence the employer believes the claimant was drafting on the morning in question.

The next most recent incident that factored in the discharge occurred on December 20, 2020, when the claimant placed a beverage in the customer service area and Ms. Cole discarded the drink. The employer also considered what it deemed to be earlier instances of rude behavior on the part of the claimant.

### **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 Iowa Administrative Code rule 871-24.32(4).

The evidence in the record establishes a discharge for no disqualifying reason. The evidence in the record fails to establish a current act of misconduct in connection with the employment, regardless of what the claimant was actually doing at the customer service computer on January 24, 2021. The employer presented insufficient evidence to establish that the claimant's time at the customer service computer demonstrated a willful and wanton disregard of the employer's interests. The employer presented insufficient evidence to rebut the claimant's assertion that she was working on staffing issues. Even if the claimant had been drafting a complaint to the corporate office regarding her working conditions under Ms. Cole, in particular a complaint about Ms. Cole highlighting the claimant's mental health issues, that might indicate an error in judgment with regard to the time and place to draft such correspondence, but it would not rise to the level of a willful and wanton disregard of the employer's interests. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.

**DECISION:**

The March 19, 2021, reference 01, decision is reversed. The claimant was discharged 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.



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James E. Timberland  
Administrative Law Judge

September 22, 2021  
Decision Dated and Mailed

jet/scn