

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**ROBERT D FOLEY SR
3020 STATE AVE
DES MOINES IA 50317**

**PARISIAN VIRGINIA LLC
c/o FRICK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 05A-UI-08876-JTT
OC: 07/31/05 R: 02
Claimant: Appellant (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Robert Foley filed a timely appeal from the August 19, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 14, 2005. Mr. Foley participated. Human Resources Manager Lisa Harvey represented the employer and presented additional testimony through Area Loss Prevention Manager George Schaeffer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Robert Foley was employed by Younkers as a full-time baker from July 5, 2000 until July 25, 2005, when Human Resources Manager Lisa Harvey suspended him from the employment pending termination. Ms. Harvey subsequently discharged Mr. Foley through a letter Mr. Foley received approximately one week later.

The final incident that prompted the discharge occurred on Thursday, July 21, 2005; on that day Mr. Foley intentionally and fraudulently reported that he had worked longer than he had actually worked. Mr. Foley had engaged in similar behavior over the prior five to six weeks and had reported, in total, that he had worked 36.85 hours that he had not actually worked. Mr. Foley wrote his work time on a time reporting sheet. Mr. Foley had to use his access card to gain entrance to or exit the building. Area Loss Prevention Manager George Schaeffer investigated Mr. Foley's time reporting behavior by comparing the time sheets Mr. Foley prepared with computer records of Mr. Foley's entrance and exit from the building. Mr. Foley did not work on July 22-23.

On July 25, 2005, Mr. Schaeffer interviewed Mr. Foley and Mr. Foley admitted to fraudulently reporting his time worked. Mr. Foley indicated he decided to pad his time reports to get back at the chef with whom he worked. Mr. Schaeffer immediately advised Ms. Harvey of the confession. Ms. Harvey advised Mr. Foley that he was immediately suspended pending termination of his employment.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Foley was discharged for misconduct in connection with his employment. It does.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

Since the claimant was discharged, 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 to misconduct, a discharge her 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).

A claimant whose separation from the employment was the result of a disciplinary layoff or suspension imposed by the employer is considered as discharged. See 871 IAC 24.32(9).

The evidence in the record establishes that Mr. Foley was discharged for misconduct in connection with the employment. Mr. Foley's conduct in misrepresenting his work time evinced willful and wanton disregard of the interests of the employer. The discharge was effective July 25, the day Mr. Foley was suspended pending termination of his employment. Mr. Foley is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Foley.

DECISION:

The Agency representative's decision dated August 19, 2005, reference 01, is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The employer's account shall not be charged for benefits paid to the claimant.

jt/kjw