

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

HEIDI M HEINZE
Claimant

STUFF ETC INC
Employer

APPEAL NO. 20A-UI-00546-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/15/19
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Heidi Heinze filed a timely appeal from the January 9, 2020, reference 01, decision that disqualified her 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 December 16, 2019 for insubordination in connection with the employment. After due notice was issued, a hearing was held on February 5, 2020. Ms. Heinze participated. Julie Arnold represented the employer. Exhibits A through I were received into evidence.

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: Heidi Heinze was employed by Stuff Etc., Inc. as a full-time Hard Goods Processor from 2010 until December 16, 2019, when Julianna Pauley, General Manager, and Director of Operations discharged her from the employment. From the start of the employment until December 13, 2019, Ms. Heinze's duties involved primarily back room work getting items other than clothing ready for display on the sales floor. During that same period Ms. Heinze's assisted with cleaning. During that same period, Ms. Heinze did not otherwise work on the sales floor. During the last four months of the employment, Ms. Pauley was Ms. Heinze's immediate supervisor. Toward the end of the employment, Ms. Heinze's regular work hours were 7:30 a.m. to 4:00 p.m., Monday, Tuesday, Thursday and Friday. From August 2019 until the end of the employment, Ms. Heinze was approved for intermittent leave under the Family and Medical Leave Act so that she could provide care to her mother, who was suffering from terminal congestive heart failure. During this same period, Ms. Heinze was suffering from anxiety, depression and adjustment disorder associated with her mother's prognosis.

The incident that triggered the discharge occurred on Friday, December 13, 2019. On that day, Ms. Pauley changed Ms. Heinze's work assignment and directed Ms. Heinze to work on the sales floor. When Ms. Heinze protested that she did not usually work on the sales floor and was

anxious about interacting with customers, Ms. Pauley insisted that Ms. Heinze work on the sales floor anyway. When a nearby coworker volunteered to work on the sales floor so that Ms. Heinze could perform her regular back room duties, Ms. Pauley continued to insist that Ms. Heinze work on the sales floor. Ms. Heinze then experienced a full-on panic attack. Ms. Heinze was about to walk off the job when a coworker suggested that Ms. Heinze contact Julie Arnold, Human Resources Representative. Ms. Heinze located Ms. Arnold in the parking lot as Ms. Arnold was getting out of her vehicle. Ms. Arnold immediately perceived that Ms. Heinze was in a panicked, upset state and was concerned that it would be unsafe for Ms. Heinze to drive in that state. Ms. Heinze attempted to explain the basis for her upset state. Ms. Arnold authorized Ms. Heinze to leave the workplace and directed Ms. Heinze to return to work on Monday, December 16, 2019. Ms. Arnold told Ms. Heinze that when Ms. Heinze returned to work the following Monday, Ms. Arnold would assist in addressing the issue between Ms. Heinze and Ms. Pauley. When Ms. Heinze returned to work on Monday, December 16, 2019, Ms. Arnold was absent from the workplace. On that day, Ms. Pauley and the Director of Operations met with Ms. Heinze and discharged her from the employment. Ms. Heinze's mother passed away five days later.

Ms. Heinze had received two prior reprimands before the final incident that triggered the discharge. In June 2019, the employer issued a verbal warning to Ms. Heinze after Ms. Heinze used profanity as she spoke to two coworkers about processing freight. Ms. Heinze acknowledged the conduct violated the employer's policies. The employer directed Ms. Heinze to demonstrate a more professional demeanor. The employer issued a written reprimand to Ms. Heinze in August 2019 in response to a coworker's complaint that Ms. Heinze was bringing her home stress to work, which the coworker perceived as creating a negative work environment. The written reprimand was issued in the same month that Ms. Heinze began to use intermittent FMLA leave to care for her terminally ill mother.

Ms. Heinze had received generally positive performance reviews during the employment, but one or more of those reviews also noted that Ms. Heinze had a "strong personality" that could influence the work environment in positive and negative ways.

Prior to the final incident that triggered the discharge, the employer consistently referenced Ms. Heinze's job title and duties as hard good processing. In connection with the final incident and discharge, the employer began referring to Ms. Heinze as a sales associate.

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).

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 weight of the evidence in the record establishes a discharge for no disqualifying reason. The employer presented insufficient evidence, and insufficiently direct and satisfactory evidence, to prove misconduct in connection with the final incident that triggered the discharge. The employer presented insufficient evidence to prove that Ms. Pauley's directive that

Ms. Heinze to work on the sales floor on December 13, 2019 was a reasonable directive, rather than a punitive or retaliative act aimed at provoking the response that followed. The employer presented insufficient evidence to prove that Ms. Heinze's refusal to acquiesce in the directive was unreasonable under the particular circumstances. Even if the directive had been reasonable and the refusal unreasonable, the evidence does not indicate any prior unreasonable refusal to follow reasonable directives. The weight of the evidence establishes a dubious basis for the written reprimand that was issued to Ms. Heinze in August 2019, during the same month when Ms. Heinze commenced using intermittent FMLA to care for her terminally ill mother. Ms. Heinze is eligible for benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits.

DECISION:

The January 9, 2020, reference 01, decision is reversed. The claimant was discharged on December 16, 2019 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/scn