

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGEL M HARGROVE
Claimant

APPEAL NO. 09A-UI-05088-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING EXPRESS
Employer

**Original Claim: 02/22/09
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 18, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on April 28, 2009. Claimant participated. Teresa Garrett, Area Supervisor, represented the employer. Exhibits One and Two 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: Angel Hardgrove was employed by Casey's Marketing Company as a full-time Second Assistant Manager from July 18, 2007 until March 18, 2009, when Area Manager Teresa Garrett discharged her for suspected theft.

On February 18, 2009, the employer's corporate office contacted Area Supervisor Teresa Garrett with concerns about daily accounting records for January 23-25, 2009 at the Algona store where Ms. Hardgrove worked.

On February 18, Ms. Garrett went to the Algona store to investigate the matter. Ms. Garrett had been at the store on January 23 and had performed the daily accounting duties on that day. Ms. Garrett had documented a \$72.00 overage for that day. In other words, the cash in the register was \$72.00 more than reflected in recorded transactions. On January 24, the cashier on duty had collected several money "drops" from the register throughout the day. The employee on duty that day recorded one of the drop amounts as \$81.00. Ms. Garrett does not know who the cashier on duty was. Ms. Hardgrove was responsible for further processing these drops the following day. On January 25, Ms. Hardgrove amended the drop record to indicate that the drop was only \$11.00, rather than \$81.00. Ms. Hardgrove did not record the reason for the amended accounting record. Ms. Hardgrove had otherwise documented the reason for any changes she made to drop records. Ms. Garrett reviewed video surveillance to confirm that

Ms. Hardgrove had been the manager on duty for the time in question. The employer did not have surveillance in the office area where Ms. Hardgrove would have further processed the drops at the time in question.

On February 18, Ms. Garrett summoned Ms. Hardgrove to the store to discuss Ms. Hardgrove's handling of the drop in question. Ms. Hardgrove told Ms. Garrett that she could not recall the reason for the amendment of the drop record from \$81.00 to \$11.00. Ms. Hardgrove told Ms. Garrett that she had no idea where the \$70.00 was. Ms. Garrett told Ms. Hardgrove that she believed Ms. Hardgrove took the money. Ms. Garrett told Ms. Hardgrove that she was discharged from 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).

While there is sufficient evidence in the record to support the employer's reasonable suspicion of cash handling impropriety, there is insufficient evidence in the record to establish, by a preponderance of the evidence, that Ms. Hardgrove actually misappropriated money from the employer in connection with the amended drop record. The weight of the evidence indicates that a reasonable person might very well have difficulty remembering or explaining the basis of an accounting record amendment made more than three weeks earlier. The evidence does establish that Ms. Hardgrove was negligent in failing to document the reason for the amended drop. The evidence establishes no other instances of similar negligence or carelessness.

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

DECISION:

The Agency representative's March 18, 2009, 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