

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHANIE K TEEPE
Claimant

APPEAL NO. 15A-UI-09132-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 07/05/15
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 August 4, 2015, reference 01, decision that that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant had been discharged on July 1, 2015 for no disqualifying reason. After due notice was issued, a hearing was held on September 1, 2015. Claimant Stephanie Teepe participated. Becky Lane represented the employer and presented additional testimony through Kelly Rohrbuck. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits One through Six into evidence. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

ISSUES:

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

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Stephanie Teepe was employed by Casey's Marketing Company as a part-time store clerk at the Casey's store in Laurens from 2012 until July 1, 2015, when Julie Sullivan, Area Supervisor, discharged her for attendance. Beck Lane, Store Manager, communicated the discharge message to Ms. Teepe on July 1, 2015. Ms. Lane was Ms. Teepe's immediate supervisor. Ms. Teepe's usual work hours were 8:00 a.m. to 2:00 p.m. on the week days and similar hours every other weekend. Ms. Teepe's usual duties involved making submarine sandwiches. When the employer posted the work schedule that included Wednesday, July 1, and Thursday, July 2, Ms. Teepe was not scheduled to work on July 1 and was on the schedule to work 4:00 p.m. to 11:00 p.m. on July 2. When Ms. Teepe saw the schedule, she reminded Ms. Lane that she had

requested July 2 off. Ms. Teepe had followed the employer's time-off request procedure by submitting a written request the previous week. After Ms. Teepe reminded Ms. Lane that she had requested July 2 off, Ms. Lane returned a short while later and told Ms. Teepe that she had taken care of it.

Ms. Teepe continued under the belief that she was not scheduled to work on July 1 and 2. Ms. Lane had not advised otherwise. On June 29, 2015, Ms. Teepe's mother asked Ms. Teepe to assist her in getting to a cancer treatment appointment in Spencer. The appointment was set for July 1 at 3:00 p.m. It would take 45 minutes to travel to the appointment, 1.5 hours for the appointment and 45 minutes to return from the appointment. Because Ms. Teepe knew she had July 1 off, she agreed to transport her mother to the medical appointment.

At 11:30 a.m. on July 1, 2015, Ms. Teepe was at home getting ready to collect her mother for the appointment when she received a telephone call from Ms. Lane. At that time, Ms. Lane told Ms. Teepe that Ms. Teepe had to work that evening from 4:00 p.m. to 11:00 p.m. in order to have July 2 off. Ms. Teepe told Ms. Lane that she needed to take her mother to the cancer treatment appointment. Ms. Lane knew that Ms. Teepe's mother was in cancer treatment. When Ms. Lane asked Ms. Teepe what she meant by mentioning her need to take her mother the medical appointment, Ms. Teepe clarified that it meant that she would not appear for a shift that day, that she had been scheduled off, and that she would be taking her mother to her mother's medical appointment. Before Ms. Teepe left town with her mother, she stopped at the Casey's store to let Ms. Lane know that she had rearranged her July 2, 2015 appointment and would no longer need July 2 off. Ms. Lane was outside the Casey's store when Ms. Teepe stopped by to speak with her. Ms. Lane told Ms. Teepe that she did not have time to speak with her at that time. Later in the day, as Ms. Teepe was returning with her mother from her mother's medical appointment, she received a telephone call from Ms. Lane. Ms. Lane advised that Ms. Teepe did not need to bother returning to the employment and that the employer deemed her to be a no-call/no-show for a shift on July 1. Ms. Lane told Ms. Teepe that Ms. Sullivan, the Area Supervisor, had made the decision to discharge Ms. Teepe from the employment. There were no prior attendance matters that factored in the discharge decision.

Earlier in the employment, Ms. Lane had reprimanded Ms. Teepe after Ms. Teepe's 11-year-old daughter threw a fit at the Casey's store after Ms. Teepe declined to provide her daughter with money to go swimming. Ms. Teepe had done nothing to encourage the behavior and attempted to terminate the behavior. Ms. Teepe's daughter was eventually escorted from the store.

Earlier in the employment, a supervisor wanted Ms. Teepe to take off some jewelry she was wearing while performing work in the employer's kitchen. Ms. Teepe did not immediately comply, but did take the jewelry off at her earliest convenience.

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.

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). 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).

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's *unexcused* absences were excessive. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32(8). Absences related

to issues of personal responsibility such as transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Employers may not graft on additional requirements to what is an excused absence under the law. See Gaborit v. Employment Appeal Board, 743 N.W.2d 554 (Iowa Ct. App. 2007). For example, an employee's failure to provide a doctor's note in connection with an absence that was due to illness properly reported to the employer will not alter the fact that such an illness would be an excused absence under the law. Gaborit, 743 N.W.2d at 557.

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 fails to establish misconduct in connection with the employment. The evidence indicates that Ms. Teepe had been scheduled off for July 1 when the schedule was posted and had no idea the employer would expect her to work that afternoon until the employer notified her four and a half hours before the shift that she would need to work. Ms. Teepe had obligated herself to take her mother for a cancer treatment appointment and reasonably refused the employer's directive to appear for work on short notice. Accordingly, the incident did not involve insubordination within the meaning of the law. Nor was the absence from the proposed shift on July 1 an unexcused absence. Ms. Teepe had been scheduled off that day. The evidence fails to establish a current act of misconduct upon which a disqualification for benefits might be based.

Because Ms. Teepe was discharged for no disqualifying reason, she is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The August 4, 2015, reference 01, decision is affirmed. The claimant was discharged on July 1, 2015 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/css