

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEREMY T SHINE

Claimant

APPEAL NO. 15A-UI-01799-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 01/04/15

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 4, 2015, reference 02, decision that disqualified him for benefits and the relieved the employer's account of liability for benefits, based on an Agency conclusion that the claimant had been discharged on December 17, 2014 for misconduct in connection with the employment. After due notice was issued, a hearing was held on March 11, 2015. Claimant participated. Kim Hoening, Clinton Store Manager, represented the employer. The hearing in this matter was consolidated with the hearing in Appeal No. 15A-UI-01800-JTT. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits A and One through Four 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: The claimant worked for Casey's during two distinct periods and at two different stores. The first period employment was at a store in Washington. That employment ended in May 2011. The more recent period of employment was at a Casey's store in Clinton, where the claimant worked as a part-time pizza maker. The most recent employment began in June 2014 and ended on December 17, 2014. After the claimant separated from the employer in 2011, he wrote bad checks to Casey's. The claimant again wrote bad checks to Casey's in 2013. The bad checks totaled \$469.53. Casey's had referred the bad checks to a collection agency for recovery but the claimant had still not satisfied the checks at the time he began the new period of employment in June 2014.

On July 15, 2014 the employer's corporate office directed the Clinton Store Manager, Kim Hoening, to issue a corrective action statement to the claimant. The corrective action statement referenced the seven bad checks from 2011 and 2013. The corrective action statement directed the claimant to pay for the checks or have arrangements in place to pay for the checks by August 15, 2014. The claimant paid for one of the checks but otherwise

failed to make a good faith effort to repay Casey's for the theft(s) that occurred at a time well before the most recent period of employment. When the claimant failed to follow through with promises to pay in October and/or November 2014, the employer discharged the claimant from the employment on December 17, 2014.

The employer had a policy that *an employee* who wrote checks to employer with insufficient funds to cover the check, had 30 days from the time the check was returned to pay the check. That policy was in the employer's handbook, which was available to the claimant in the workplace. The claimant signed his acknowledgment of the handbook on June 23, 2014.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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).

The evidence in the record establishes misconduct on the part of the claimant but not misconduct *in connection with the employment* as required by the statute. The bad checks in question were written and had gone to collection long before the claimant began the most recent period of employment that started in June 2014. The claimant had clearly demonstrated bad faith toward Casey's in connection with the thefts-by-check long before the employer elected to rehire him. It was within the employer's discretion to revisit, during the most recent employment, a stale matter that did not arise in connection with the employment and to attempt to recover the debt. It was certainly within the employer's discretion to end the at-will employment. However, because the underlying misconduct did not occur during or in connection with the most recent period of employment, it cannot serve as a basis for disqualifying the claimant for unemployment insurance benefits in connection with the separation from the most recent period of employment. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The February 4, 2015, reference 02, decision is reversed. The claimant's discharge was not based on misconduct *in connection with the employment*. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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