

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CALLIE J SCHUTTLE
Claimant

APPEAL NO. 12A-UI-11258-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 08/19/12
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 10, 2012, reference 01 decision that allowed benefits. After due notice was issued, a hearing was held on October 15, 2012. Ms. Schuttler participated. Theresa Grein, store manager, represented the employer.

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: Callie Schuttler was employed by the Casey's store in St. Ansgar as a part-time clerk/cook from October 2011 until August 15, 2012, when Theresa Grein, store manager, discharged her from the employment for violating the employee discount policy.

The incident that triggered the discharge occurred on July 12, more than a month prior to the discharge. On July 12, Ms. Schuttler worked from 3:00 p.m. to 11:41 p.m. At 10:48 p.m., Ms. Schuttler rang up a 12-inch ham sandwich and used her employee discount. The employee discount reduced the price of the sandwich from \$5.00 to \$2.50. The store had been too busy earlier that evening for Ms. Schuttler to take a lunch break and by the end of the shift Ms. Schuttler was hungry. Under the employer's work rules, Ms. Schuttler was not allowed to stay in the employer's store after the end of her shift to eat her sandwich. Before Ms. Schuttler left the store that night, she made her sandwich. Ms. Schuttler then left the store with the sandwich. The employer's written work rules required that food purchased with the employee discount could not leave the store, but had to be consumed at the store. Work rules also indicated that the employee discount could only be used in connection with working a shift. Ms. Schuttler had reviewed the work rule, though not carefully, and did not think taking a sandwich with her at the end of the shift and the end of the night would be a violation of the work rule.

At some point between July 12 and August 17, Area Supervisor Sue Hagen noted the late-evening use of the employee discount on the cash register transaction records. Ms. Hagen brought the matter to the attention of Ms. Grein. They reviewed surveillance video that showed Ms. Schuttler paying for the sandwich and later making the sandwich and leaving with the sandwich.

On August 17, Ms. Grein met with Ms. Schuttler for the purpose of discharging her from the employment for violation of the employee discount policy. That was the only basis for the discharge.

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).

The evidence in the record fails to establish a current act of misconduct. The incident that triggered the discharge occurred on July 12, 2012. The employer first spoke to Ms. Schuttler about the incident on August 15, 2012, at the same time the employer discharged Ms. Schuttler from the employment. Ms. Grein testified, but Ms. Hagan did not. Ms. Grein did not know when Ms. Hagan had first noted the problem transaction. There is insufficient evidence in the record to establish that the employer's delay, from the date of the violation to the date the matter was first broached with Ms. Schuttler, was reasonable. Because the evidence fails to establish a current act of misconduct, there would be no basis for disqualifying Ms. Schuttler for unemployment insurance benefits. In any event, the administrative law judge concludes that Ms. Schuttler's violation of the policy arose from a good-faith error in judgment, rather than from an intent to act contrary to the interests of the employer. In other words, even if the evidence had established a current act, the administrative law judge would not have found Ms. Schuttler's act to rise to the level of misconduct in connection with the employment that would disqualify her for unemployment insurance benefits.

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

DECISION:

The Agency representative's September 10, 2012, 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