

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAYANNE M HALSTEAD**  
Claimant

**APPEAL NO. 12A-UI-03979-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KUM & GO LC**  
Employer

**OC: 03/04/12**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Jayanne Halstead filed a timely appeal from the April 4, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 3, 2012. Ms. Halstead participated and presented additional testimony through Jarrid Lamb. Sherrie Hassebrock represented the employer. Exhibits A and B 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: Jayanne Halstead was employed by the Subway inside the Riverside Kum & Go as a full-time sandwich artist from July 2011 until March 6, 2012, when Sherrie Hassebrock, Subway manager, discharged her for failing to secure a restaurant door to the outside at the end of her closing shift. Ms. Hassebrock was Ms. Halstead's immediate supervisor.

The final incident that triggered the discharge occurred on March 4, 2012. At the end of the shift, Ms. Halstead left a door to the outside unsecured when she left the restaurant after closing. The employer learned of the incident from the Kum & Go staff after a purported customer entered the deli after hours through the door that had been left unsecured. Ms. Halstead's duties in connection with the closing shift included securing all doors before she left. Ms. Halstead knew there was one door that needed additional attention to ensure that it could not be opened. Ms. Halstead did not test the door to see whether it could be opened before she left for the night and left the door unsecured.

The final incident followed another on February 3, 2012, when Ms. Halstead again left a door to the deli unsecured at the end of her shift and a customer entered the deli after hours. Ms. Halstead had exited the door late in the shift to take out the trash and had forgotten to relock it upon re-entering the store or before she exited for the night.

## 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 does not establish a willful disregard of the employer's interests. Instead, the evidence establishes two instances of carelessness or negligence. These two instances, a month apart, are not sufficient to establish a pattern of carelessness or negligence indicating a willful disregard of the employer's interests.

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

**DECISION:**

The Agency representative's April 4, 2012, reference 01, decision is reversed. 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.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw