

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TANYA K DOYLE
Claimant

APPEAL NO. 17A-UI-06803-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VANTEC INC
Employer

OC: 05/21/17
Claimant: Appellant (5R)

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

STATEMENT OF THE CASE:

Tanya Doyle filed an appeal from the June 26, 2017, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that Ms. Doyle was discharged on April 10, 2017 for insubordination in connection with the employment. After due notice was issued, a hearing was held on July 21, 2017. Ms. Doyle participated. Sherri Hotzler represented the employer. Exhibits 1, 2, 4 through 7, 9-12, A through D were received into evidence.

ISSUE:

Whether Ms. Doyle separated from the employment for a reason that disqualifies her for benefits or that relieves the employer of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Tanya Doyle was employed by Vantec, Inc. as the full-time Chief Operating Officer from May 2015 until April 10, 2017, when Sherri Hotzler, President and Chief Executive Officer, discharged her from the employment.

Vantec, Inc. is a privately-held, family-owned, plastic injection manufacturer headquartered in Webster City. The company has a second facility in Falls City, Nebraska. Sherri Hotzler is President, Chief Executive Officer, shareholder and board member. Ms. Hotzler's father, Willie Van Wyhe, is shareholder and Board Chairman. Ms. Hotzler's mother, Bev Van Wyhe, is Vice President, shareholder and board member. Ms. Hotzler's sister is also a shareholder and board member.

When Ms. Hotzler hired Ms. Doyle in May 2015, Ms. Hotzler provided Ms. Doyle with an offer letter that included, among other things, a \$180,000.00 annual salary, a statement that Ms. Doyle would report to the C.E.O., that is, to Ms. Hotzler. The employer hired Ms. Doyle to gain the benefit of Ms. Doyle's business expertise in "Lean Manufacturing." The employer hoped to use Ms. Doyle's expertise to make beneficial changes to the business culture and to increase efficiency in support of the employer's expansion and profitability goals.

Several factors led to a breakdown in the employment relationship and Ms. Doyle's separation from the employment. These included the nature of Ms. Doyle's position of company reformer and the nature of Ms. Hotzler's position as the company's primary salesperson. Under the guise of pursuing efficiency and accountability in the context of a "lean turnaround" and changing the business culture to a "servant leader" organizational structure, Ms. Doyle engaged in a pattern of undermining Ms. Hotzler's authority as President and Chief Executive Officer. On multiple occasions, Ms. Doyle questioned Ms. Hotzler's activities while she was away on business. Ms. Doyle went beyond that and directed the Human Resources Manager, Joan Kennedy, to deduct time from Ms. Hotzler's Paid Time Off allotment when Ms. Hotzler's was actually engaged in business-related activities. At the same time, Ms. Doyle took time off in dozens of instances without properly requesting Paid Time Off by contacting Ms. Hotzler for approval of the time. In one instance when Ms. Hotzler was away from the workplace, Ms. Doyle had staff move the location of Ms. Hotzler's desk. While moving the desk at some point had been part of a plan to improve work flow, Ms. Doyle intentionally timed the move to exclude Ms. Hotzler from the process. In connection with moving the desk, Ms. Doyle also sent an email to staff members deriding Ms. Hotzler and indicating that she could not stand working in the vicinity of Ms. Hotzler. At another point in the employment, without Ms. Hotzler's approval or involvement, Ms. Doyle met with a banker with whom she had a prior business relationship to discuss Vantec financial matters and moving Vantec business from the bank with which Vantec had a long-standing business relationship. Ms. Doyle repeatedly and intentionally excluded Ms. Hotzler from matters relating to hiring new staff. In sum, Ms. Doyle systematically sabotaged and usurped Ms. Hotzler's position and authority.

The final incident that triggered the separation occurred during a working lunch meeting at a restaurant on April 7, 2017. Ms. Hotzler had a number of performance issues she wished to discuss with Ms. Doyle and brought with her a written performance evaluation. Ms. Doyle had requested the "one-on-one" meeting with Ms. Hotzler to discuss what she believed were Ms. Hotzler's performance and accountability issues. During the meeting, Ms. Doyle told Ms. Hotzler that Ms. Hotzler was as weak as the napkin Ms. Doyle was holding. During the meeting Ms. Hotzler had begun to weep. During the meeting, each raised the other's Paid Time Off issues. When Ms. Hotzler reminded Ms. Doyle that Ms. Doyle reported to Ms. Hotzler and not vice versa, Ms. Doyle stated, "We're done," paid her lunch bill and abruptly left the restaurant. Ms. Hotzler interpreted the conduct as Ms. Doyle voluntarily quitting the employment. However, when Ms. Doyle left the restaurant she returned to the Vantec facility. Once there, Ms. Doyle met with Ms. Kennedy and another member of the management team to discuss what had just occurred with Ms. Hotzler. Ms. Hotzler arrived in time to see Ms. Doyle and the other two managers exiting the board room. Ms. Doyle then left work early without discussing the early departure with Ms. Hotzler. Over the weekend that followed, Ms. Hotzler sent an email message to board members indicating that Ms. Doyle had quit. Ms. Doyle sent an email message to Mr. Van Wyhe asking for documentation of her separation. On April 10, 2017, Ms. Hotzler sent Ms. Doyle a letter terminating the employment based on the purported quit.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d

438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

The weight of the evidence in the record establishes that Ms. Doyle did not voluntarily quit on April 7, 2017, but was in fact discharged on April 10, 2017.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 an intention on the part of Ms. Doyle to undermine the authority of the company President and Chief Executive Officer and a pattern of behavior carrying out that intention. Ms. Doyle's pattern of conduct undermined business operations and protocol and thereby demonstrated a substantial disregard for the employer's interests. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Doyle was discharged for misconduct. Accordingly, Ms. Doyle is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. Ms. Doyle must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The June 26, 2017, reference 01, decision is modified as follows. The claimant was discharged on April 10, 2017 for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until she has worked in and paid wages for insured work equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

This matter is remanded to the benefits bureau for determination of the claimant's availability for work within the meaning of the unemployment insurance law in light of the claimant's asserted full-time involvement in her business ventures.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs