

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAURENDIA K DENNING
Claimant

APPEAL NO. 14A-UI-11289-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOHN DEERE COMPANY
Employer

**OC: 08/10/14
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Laurendia Denning filed a timely appeal from the October 29, 2014, reference 01, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that she had been discharged for misconduct in connection with the employment. After due notice was issued, a hearing was held on November 19, 2014. Ms. Denning participated. Dan Terry, Labor Relations Representative, 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: Laurendia Denning was employed by John Deere Company as a full-time utility pool worker from 2011 until September 24, 2014, when Josh MacLean, Labor Relations Representative, discharged her from the employment for an alleged unauthorized absence from the workplace and alleged time reporting fraud on September 15, 2014. Ms. Denning's usual work hours were 7:00 a.m. to 3:30 p.m. If Ms. Denning wanted to leave the employer's facility during her shift, the employer's work rules required that she contact a supervisor to make a request to leave. Ms. Denning was aware of this requirement. Ms. Denning understood that she was required to clock out for her lunch break if she left the workplace for lunch. To enter the employer's facility, Ms. Denning would have to scan her ID badge and pass through a turnstile. To clock in, Ms. Denning would have to scan her ID badge at one of the time clocks located inside the employer's facility. On September 15, 2014, Ms. Denning clocked in at 6:55 a.m. so that she could attend a meeting at 7:00 a.m. The meeting lasted under two hours. When the meeting was over, Ms. Denning located a supervisor to get her work assignment for day. When that supervisor did not have a work assignment for Ms. Denning, Ms. Denning assisted with cleaning up a break room area. At 11:15 a.m., Ms. Denning used her ID badge to scan out of the workplace facility through the turnstile. Ms. Denning exited the facility to retrieve her lunch and re-entered the employer's facility. Ms. Denning clocked out at 3:30 p.m. Ms. Denning submitted time reporting information

that indicated she had worked from 6:55 a.m. to 3:30 p.m. In the course of investigating an unrelated matter, Josh MacLean, Labor Relations Representative, reviewed surveillance video concerning Ms. Denning's access to the workplace facility on September 15. On September 24, 2014, Mr. MacLean shared a portion of a surveillance video with Ms. Denning and asked Ms. Denning whether she had been at work all day on September 15. Ms. Denning asserted she had been at work all day that day.

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 employer has presented insufficient evidence, and insufficiently direct and satisfactory evidence, to establish misconduct in connection with the employment that would disqualify Ms. Denning for unemployment insurance benefits. The employer had the ability to present, but elected not to present, testimony from persons with personal knowledge of the incident that triggered the discharge or the investigation into the alleged wrongdoing. The employer’s sole witness at the hearing had no personal knowledge and no involvement in investigating the incident that triggered the discharge or in the discharge decision. The employer had the ability to present, but elected not to present, the video surveillance record that the employer alleges documents misconduct on the part of Ms. Denning on September 15. The employer indicates that the video surveillance record remains in the employer’s possession. The employer had the ability to present, but elected not to present, the timekeeping record that the employer asserts demonstrates time reporting fraud. The employer indicates that the time keeping record remains in the employer’s possession. The employer has presented insufficient evidence to meet its burden of proving misconduct in connection with the employment by a preponderance of the evidence. The employer has failed to present sufficient evidence to rebut Ms. Denning’s assertion that she was at work during all appropriate times on September 15, 2014.

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

DECISION:

The October 29, 2014, reference 01, decision is reversed. The claimant was discharged on September 24, 2014 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/pjs