

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL H GRIMM
Claimant

APPEAL NO. 10A-UI-12077-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MCDONALDS
Employer

**OC: 07/25/10
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 20, 2010, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on October 12, 2010. Claimant participated. Teri Torres, Area Supervisor, 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: Michael Grimm was employed by McDonald's in Waterloo from 2006 until July 14, 2010, when Teri Torres, Area Supervisor, discharged him for unsatisfactory work performance. During the last year of the employment, Mr. Grimm was a swing manager.

The final incident that triggered the discharge concerned Mr. Grimm's work performance during the July 13, 2010 evening shift. Mr. Grimm was responsible for supervising three employees as they performed the closing duties. Mr. Grimm was responsible for reviewing each crew member's station to make certain that it was properly cleaned and stocked. The employer utilizes checklists for this purpose, but Mr. Grimm did not use the checklist on July 13. The employer reviewed the floors and concluded that the floors had not been swept or mopped. The employer determined that the cup racks, the condiments, and the milk cooler had each not been adequately stocked. The employer determined that the various workstations had not been thoroughly wiped down. When questioned, Mr. Grimm admitted he had not walked through the restaurant to make certain that everything was done that was supposed to be done. Mr. Grimm acknowledged that that was part of his closing duties as swing manager.

In making the decision to discharge Mr. Grimm from the employment, Ms. Torres considered a review of the restaurant that she had conducted during the first week of June. Ms. Torres had arrived at the restaurant after 9:00 p.m. but before restaurant was to close. Ms. Torres found Mr. Grimm and two crew members outside the store in violation of the employer's security

policy. Ms. Torres determined that Mr. Grimm had allowed two crewmembers to operate out of the same cash register, thus increasing the risk of cash handling error and employee theft. Ms. Torres determined that there was a problem with cleanliness and insufficient stocking throughout the store. Mr. Grimm concedes that he was outside the building in violation of the employer's security policy, that he did fail to follow the employer's cash handling policy by having more than one employee on a drawer, and that he had just been lazy in performing his duties. The employer had also determined that Mr. Grimm had allowed employees to fry pancakes in a fryer and to eat that food in violation of the employer's establish policies. On June 5, Ms. Torres told Mr. Grimm that if his work performance did not improve, his employment would be in jeopardy. A few weeks prior to the discharge, Mr. Grimm had met with restaurant manager Ron Duncan for a performance evaluation during which Mr. Duncan echoed this sentiment.

Mr. Grimm had undergone eight weeks of book training, additional online computer program training, and other training as part of his training to become a swing shift manager.

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 establishes two instances when the employer reviewed the store and found Mr. Grimm's performance as supervisor deficient and found Mr. Grimm to have acted in violation of the employer's established policies. The weight of the evidence establishes negligent work performance in connection with both incidents. The incidents occurred at the beginning of June 2010 and on July 13, 2010. The evidence fails to establish any other specific incidents of neglect or rule violation on the part of Mr. Grimm. These two incidents, more than a month apart, do not establish a pattern of negligence indicating a willful or wanton disregard of the employer's interests. The administrative law judge concludes that these two incidents of unsatisfactory work performance do not rise to the level of misconduct in connection with the employment that would disqualify Mr. Grimm for unemployment insurance benefits. Mr. Grimm was discharged for no disqualifying reason. Mr. Grimm is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Grimm.

DECISION:

The Agency representative's August 20, 2010, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. 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

jet/pjs