

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

CARRIE BLOM

Claimant

APPEAL NO. 19A-UI-03223-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BIG RIVER RESOURCES LLC

Employer

OC: 03/17/19

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 April 15, 2019, reference 02, decision that held the claimant was eligible for benefits provided she met all other eligibility requirements and that the employer's account could be charged for benefits, based on the Benefits Bureau deputy's conclusion that the claimant was discharged on March 18, 2019 for no disqualifying reason. After due notice was issued, a hearing was held on May 8 and 9, 2019. Claimant Carrie Blom participated. Deborah Green represented the employer and presented additional testimony through Tina McCulloch. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1 through 17 into evidence.

ISSUES:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Carrie Blom was employed by Big River Resources, L.L.C. as a full-time Finance Staff Accountant from 2009 until March 18, 2019, when the employer discharged her from the employment for carelessness and purported dishonesty. Ms. Blom's multiple responsibilities included verifying that checks third party's presented to financial institutions as checks to be paid by Big River accounts were indeed checks created by Big River, rather than fraudulent checks. On February 25, 2019, the employer's check processing vendor added a new feature to assist with the check verification process. Ms. Blom was adept at using the vendor's software and readily mastered this new "Reverse Positive Pay" verification drop down menu. On, March 14, 2019, Ms. Blom elected not to use this new feature and elected not to take other reasonable and appropriate steps to verify that a \$77,662.46 check presented for payment was indeed a check created by Big River. Though the amount of the check was not out of the dollar range for which the employer regularly issued payment, the check sequence number was sufficient to give an attentive accountant pause. The check sequence number was 25951, while the other checks being verified at the same time began with 254 or 255. Ms. Blom cleared the check for

payment. At a later point in the check processing procedure, the financial institution caught that the check was fraudulent and prevented the check from being paid out.

In the same time frame during which the above-referenced fraudulent check was being processed, the financial institution brought to the employer's attention a different fraudulent check that had been presented for payment. That other check had nothing to do with Ms. Blom. However, the employer alerted Ms. Blom and others to remain alert to fraudulent checks. Subsequent to this alert, Ms. Blom brought to the employer's attention the fraudulent check that she had let through. However, Ms. Blom neglected to share with the employer that the check in question was one she had processed. The employer subsequently concluded that Ms. Blom's omission of reference to being responsible for letting the fraudulent check through indicated dishonesty on the part of Ms. Blom. After this incident, the employer clarified expectations for verifying checks and Ms. Blom complied with those expectations.

In making the decision to terminate the employment, the employer also considered two data entry errors Ms. Blom made in mid-January.

In making the decision to terminate the employment, the employer also considered a concern that Ms. Blom had not documented investor information in the appropriate ledger. Such documentation was within the scope of Ms. Blom's duties.

In November 2018, the employer documented that Ms. Blom had room to improve in some areas of her performance, but had made marked improvement in others.

REASONING AND CONCLUSIONS OF LAW:

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).

The weight of the evidence in the record establishes a discharge for no disqualifying reason. The weight of the evidence establishes that Ms. Blom was negligent in failing to properly verify the check in question on March 14, 2019. The weight of the evidence does not establish intentional dishonesty in connection with Ms. Blom discussing that check with the employer. While there were prior concerns about attention to detail, the weight of the evidence does not establish a pattern of carelessness and/or negligence that would indicate a willful and wanton disregard of the employer's interests. Ms. Blom is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The April 15, 2019, reference 02, 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/rvs