

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**KATHY M ACKERMAN**  
Claimant

**APPEAL NO. 19A-UI-06070-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**  
Employer

**OC: 06/23/19**  
**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 July 22, 2019, reference 01, decision that held the claimant was eligible for benefits provided she met all other eligibility requirements and that employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on June 24, 2019 for no disqualifying reason. After due notice was issued, a hearing was held on August 22, 2019. Claimant Kathy Ackerman participated. Deb Waage represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1 through 5 into evidence. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

**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: Kathy Ackerman was employed by Casey's Marketing Company until June 24, 2019, when the employer discharged her from the employment. Ms. Ackerman began her employment with Casey's in 2010. During the last three years of the employment, Ms. Ackerman was the full-time Store Manager at the Clear Lake Casey's store located adjacent to Interstate 35. That Casey's store was a high volume, high-traffic store. During the last year of the employment, Deb Waage, Area Supervisor, was Ms. Ackerman's immediate supervisor. Ms. Waage had also supervised Ms. Ackerman during earlier periods in the employment. Ms. Ackerman's duties as Store Manager included preparing the work schedule and ensuring the store was fully staffed, supervising about a dozen employees, maintaining the cleanliness of the store, performing daily record keeping, and overseeing employee time reporting. Ms. Ackerman's core work hours

were 4:00 a.m. to 1:00 p.m., Monday through Friday. Ms. Ackerman worked at other times as needed.

The final incident that triggered the discharge occurred on June 21, 2019. On that morning, Ms. Waage went to Ms. Ackerman's store and found it in disarray. The outside garbage cans were full. The gates to the dumpster area were open. Ms. Ackerman was supervising the shift and was working short-staffed. The short-staffing situation was due to a cashier calling in absent that morning and due to a few employees quitting on short notice during the preceding week. Ordinarily, Ms. Ackerman would expect the absent employee to find coverage for the missed shift or she would attempt to summon another employee to cover the shift. However, the recent loss of multiple employees made that more difficult.

On June 17, 2019, a third-party "mystery shopper" had gone to Ms. Ackerman's store after Ms. Ackerman had left for the day. Casey's had recently implemented the mystery shopper evaluations. The mystery shopper evaluated the appearance of Ms. Ackerman's store and downgraded the store for issues with cleanliness in the gasoline pump area and cleanliness inside the store. On June 20, the Casey's corporate office emailed Ms. Ackerman the mystery shopper report and Ms. Waage discussed the report with Ms. Ackerman. Ms. Ackerman agreed to work on the issues identified in the mystery shopper report.

In making the decision to discharge Ms. Ackerman from the employment, the employer also considered two earlier unrelated matters. One concern was Ms. Ackerman's April 2, 2019 failure to discern that a new kitchen employee was out of uniform by wearing blue jeans instead of black or tan khaki pants. Ms. Waage noted the uniform violation when she arrived at the store and directed Ms. Ackerman to send the employee home. The other incident concerned Ms. Ackerman's failure to alert Ms. Waage and the employer's corporate office to employee complaints regarding another employee's sexually harassing utterances. Ms. Ackerman had addressed the complaints by speaking directly with the offending employee. One or more of the complainants brought the inappropriate utterances to Ms. Waage's attention on March 12, 2019. As Store Manager, Ms. Ackerman was charged with enforcing Casey's policies.

## **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 legitimate employer concerns, but a discharge for no disqualifying reason. The parties are in agreement that the Casey's store Ms. Ackerman managed was a high-volume, high-traffic store. While Ms. Waage had legitimate concerns on June 20, 2019 regarding the cleanliness of the store, there were extenuating circumstances. On that day, the store was operating short-staffed and could not appropriately keep up with store cleanliness. The mystery shopper noted similar concerns on June 17, at a time when Ms. Ackerman was away from the store. However, Ms. Ackerman would be powerless to enforce cleanliness at the store at times when she was off-duty and away from the store. The June 17 cleanliness issue cannot be attributed to Ms. Ackerman. Despite Ms. Waage's vague reference to earlier discussions regarding cleanliness, the weight of the evidence does not establish a pattern wherein Ms. Ackerman repeatedly failed to maintain cleanliness of the store. The weight of the evidence establishes that Ms. Ackerman made an error in judgment when she addressed the sexually harassing utterances without notifying Ms. Waage or the corporate office of the concern. The weight of the evidence establishes minor carelessness in Ms. Ackerman's failure to discern the dress code violation on April 2, 2019. The weight of the evidence does not establish conduct on the part of Ms. Ackerman that indicated a

willful and wanton disregard of the employer's interests. Ms. Ackerman is eligible for benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits.

**DECISION:**

The July 22, 2019, reference 01, decision is affirmed. The claimant was discharged on June 24, 2019 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/rvs