

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KALEENA K EVERETT**

Claimant

**APPEAL NO. 13A-UI-08978-JT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 06/30/13**

**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Kaleena Everett filed a timely appeal from the July 22, 2013, reference 01, decision that denied benefits. Ms. Everett requested an in-person hearing. After due notice was issued, an in-person hearing was held in Dubuque on October 23, 2013. Ms. Everett participated. The employer did not appear for the hearing. The employer did not participate in the hearing or request postponement of the hearing. Exhibits A through D were received into evidence.

**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: Kaleena Everett was employed by Casey's as a full-time Second Assistant Manager from 2009 until June 26, 2013, when Julie Werner, Store Manager, discharged her from the employment at the direction of Sarah Wirth, Area Supervisor. The discharge was based on Ms. Everett's failure to wear the appropriate Casey's uniform while she was on-duty. Ms. Werner had become Ms. Everett's immediate supervisor in January 2013. Ms. Wirth has become Area Supervisor over the Edgewood Casey's store in January 2013. The employer's written policy required that employees working in the kitchen wear a collared shirt, an apron, and visor or hairnet. The employer was generally lax in enforcing the dress code at the Edgewood store and employees who worked in the kitchen regularly deviated from the dress code. Prior to Ms. Wirth becoming area manager over the Edgewood store, the kitchen dress code had not been enforced.

The final incident that triggered the discharge occurred on June 26, 2013. Ms. Everett worked in the employer's kitchen that day. Ms. Everett wore a collared shirt and a hairnet, but did not wear the visor or the apron. Ms. Wirth had earlier reprimanded Ms. Everett for wearing a red collared shirt that had a black stripe going down the arms. The dress code required a red, black or red shirt. Ms. Wirth had also reprimanded Ms. Everett wearing a couple of pink highlights in her hair in support of a local breast cancer event. The employer allowed other employees to

wear unnatural hair colors. Ms. Everett concluded that the dress code was being selectively enforced only against her.

### **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 employer did not participate in the hearing and, thereby, did not present any evidence in support of the employer's assertion that Ms. Everett was discharged for misconduct in connection with the employment. The evidence establishes violations of the dress code policy in the context of generally lax enforcement of the policy. The employer has not presented evidence regarding the policy, enforcement of the policy, or Ms. Everett's violations of the policy. The evidence in the record is insufficient to establish substantial misconduct in connection with the employment that would disqualify Ms. Everett for unemployment insurance benefits. Ms. Everett is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

**DECISION:**

The agency representative's July 22, 2013, reference 01, decision is reversed. 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.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/css