

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHARON A ADAMSON**  
Claimant

**APPEAL NO. 11A-UI-08600-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OTTUMWA COMMUNITY  
SCHOOL DISTRICT**  
Employer

**OC: 05/29/11  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Sharon Adamson filed a timely appeal from the June 20, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 21, 2011. Ms. Adamson participated. The employer was aware of the hearing, did not respond to the hearing notice instructions to provide a telephone number for the hearing, and did not participate.

**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: Sharon Adamson was employed by the Ottumwa Community School District as a full-time paraprofessional from 2000 until May 9, 2011, when Davis Eidahl, associate superintendent, discharged her based on a May 6, 2011 guilty plea and conviction for Theft in the Fifth Degree, a simple misdemeanor. The conduct that triggered the discharge occurred on May 5, 2011, and involved a gas drive-off when Ms. Adamson was off-duty and away from the workplace. Ms. Adamson appeared before a judge on May 6 and entered a guilty plea to the charge. At the time the employer notified Ms. Adamson that she was discharged for the off-duty conduct, the employer cited a work rule Ms. Adamson had never heard of before. Ms. Adamson had to request a copy of the work rule. The work rule pertained to district employees' appearance and conduct on- and off-duty. The work rule indicated that district staff were models for students and should conduct themselves in an appropriate manner.

## 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).

Violation of a specific work rule, even off-duty, can constitute misconduct sufficient to disqualify a claimant from unemployment insurance benefits. See Kleidosty v. Employment Appeal Board, 482 N.W.2d 416, 418 (Iowa 1992). But, the employer must have a work rule that covers the off-duty conduct.

The employer failed to participate in the hearing and thereby failed to present any evidence to establish that Ms. Adamson was discharged for misconduct *in connection with the employment*. While the evidence establishes misconduct *outside* the employment during *off-duty* hours, there is insufficient evidence to establish that the employer had put Ms. Adamson on notice that her off-duty conduct could serve as the basis for discipline or discharge at work.

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

**DECISION:**

The Agency representative's June 20, 2011, 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/kjw