

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHERYL M PETERSON**

Claimant

**APPEAL NO. 14A-UI-12728-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 11/02/14**

**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 December 3, 2014, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits; based on an Agency conclusion that the claimant inability to perform the work to the employer's satisfaction did not constitute misconduct in connection with the employment. After due notice was issued, a hearing was held on January 7, 2015. Claimant did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Keri Sickles represented the employer and presented additional testimony through Alisha Weber of Equifax. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits One through 17 into evidence.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed by Casey's as a part-time donut maker from 2007 until October 27, 2014 when Store Manager Keri Sickles discharged her from the employment for working later than scheduled to complete assigned duties. The final incident occurred on October 23 when the claimant clocked out later than scheduled because she needed more time to complete assigned duties. The claimant has clocked out later than scheduled on many prior shifts throughout the years of her employment under similar circumstances and the employer had reprimanded the claimant for the conduct on several occasions. The next most recent non-similar conduct occurred on August 28, 2014 when the claimant did not prepare sufficient product to fill the display cases. In making the decision to discharge the claimant from the employment, the employer also considered a customer complaint from April 2014 about the claimant allegedly refusing to make a submarine sandwich for the customer. When the employer spoke to the claimant about the allegation, the claimant referenced being pressed for time with other duties.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

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). 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 in the record establishes that the claimant on many occasions throughout her employment failed to perform work as efficiently as the employer expected, but stayed beyond her scheduled quit time to ensure that all assigned work had been performed. The weight of the evidence fails to establish that the claimant was negligent or careless. The weight of the evidence indicates instead that the claimant performed to the level of her ability and chose staying later than scheduled over leaving without completing all assigned work. The conduct in question did not indicate a willful or wanton disregard of the employer's interests and was not misconduct within the meaning of the unemployment insurance law. The reprimand issued in connection with the August 2014 was based on a failure to complete assigned duties before leaving for the day. That incident was not a "current act" and in the absence of more recent similar conduct cannot be used as a basis for disqualifying the claimant for unemployment insurance benefits. The reprimand does help to explain why the claimant on other occasions stayed beyond her scheduled work time to complete assigned duties.

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

**DECISION:**

The December 3, 2014, reference 01, 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.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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