

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JUANITA L MALANAPHY**  
Claimant

**APPEAL NO. 07A-UI-00404-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FAREWAY STORES INC**  
Employer

**OC: 12/03/06 R: 04  
Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

Fareway Stores filed a timely appeal from the January 2, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on January 29, 2007. Claimant Juanita Malanaphy participated. Mike Mazour, Vice President of Human Resources, represented the employer. Employer's Exhibits One through Seven were received into evidence. The administrative law judge took official notice of the Agency's administrative records regarding benefits disbursed to the claimant.

**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: Juanita Malanaphy was employed by the Fareway Stores as a full-time clerk from September 10, 2005 until November 21, 2006, when Mike Mazour, Vice President of Human Resources, discharged her. Ms. Malanaphy worked at the Decorah store. Ms. Malanaphy's immediate supervisor was Grocery Manager Dave Noack.

The final incident that prompted the discharge occurred on November 16, 2006. On that day, Ms. Malanaphy was working at the store and was on a paid break when she purchased some beer. Ms. Malanaphy purchased the beer for her 23-year-old son, who had asked Ms. Malanaphy to purchase the beer and bring it to him in time for a birthday party. Ms. Malanaphy had agreed to purchase the beer and transport it to the son's house that day. The son did not come to the store to purchase the beer for two reasons. First, the son worked construction out of town. Second, the store manager had told Ms. Malanaphy that he did not want her children coming to the store. Ms. Malanaphy's son had given her money to purchase the beer. Ms. Malanaphy intended to transport the beer to the son's house. However, on the day in question, Ms. Malanaphy had serious personal matters she needed to attend to. Ms. Malanaphy's father is terminally ill and Ms. Malanaphy needed to go to her father's house. Ms. Malanaphy was also dealing with the loss of her mother and a close friend, both of whom

had recently passed away. Ms. Malanaphy learned that a coworker, Ross Budwig, would be in the vicinity of her son's home later that day and asked the coworker if he would take the beer to her son. The coworker agreed. However, the coworker was under the legal age to possess or consume alcohol. While Ms. Malanaphy was on her break she purchased a 24-pack of Coors Light, obtained the coworker's keys and walked the warm beer to his car. Mr. Malanaphy placed the beer in the coworker's trunk. Ms. Malanaphy spoke with her son later that evening and the son confirmed that he had in fact received the beer. A customer, Lorie Elwood, had watched Ms. Malanaphy put the beer in the coworker's car and at some point reported her observation to the store manager.

On November 20, Grocery Manager Dave Noack reported the incident to Mike Mazour, Vice President of Human Resources. Mr. Mazour directed Mr. Noack to collect written statements. On November 20, Ms. Malanaphy provided a written statement. See Exhibit Three. Ms. Malanaphy indicated in the statement that she had bought the beer for her son and had enlisted Mr. Budwig to transport the beer to her son as a favor. On November 20, Mr. Noack drafted a statement for Mr. Budwig to review and sign. Mr. Budwig wrote on the document that he was only willing to give the statement provided Ms. Malanaphy did not get into trouble. On November 20 or 21, Ms. Elwood or someone else drafted a statement on Ms. Elwood's behalf. Mr. Noack placed Ms. Malanaphy on a three-day suspension pending a decision about her employment. On November 21, Ms. Malanaphy contacted Mr. Mazour and requested a quicker decision about her employment. Mr. Mazour told Ms. Malanaphy that she was discharged from the employment. The employer did not present testimony from Mr. Noack, Mr. Budwig or Ms. Elwood.

The employer had a written policy prohibiting sale of alcohol to minors. The employer had a written policy that prohibited employees from possessing alcohol in the workplace except when handling the company's inventory of alcohol. Both policies appeared in the employee handbook, a copy of which Ms. Malanaphy received August 30, 2006. Ms. Malanaphy had received additional training regarding the employer's alcohol policies. The employer had a policy concerning employee purchases on company time, but the store's practice differed from the policy. Ms. Malanaphy thought she could purchase items on her break so long as she had a receipt for the purchase.

#### **REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence in the record establishes that Ms. Malanaphy was discharged for misconduct in connection with the employment that disqualifies her for unemployment insurance benefits. It does not.

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).

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 administrative law judge notes that the employer provided no testimony from individuals with first-hand knowledge of the incident that prompted the discharge, despite having the ability to present such testimony. The administrative law judge concludes that the more direct and satisfactory evidence would have exposed deficiencies in the employer's case.

The employer alleges that Ms. Malanaphy purchased the alcohol for the underage coworker. The greater weight of the evidence does not support such a conclusion. The greater weight of the evidence indicates that Ms. Malanaphy purchased the alcohol for her son, who was of legal age to consume alcohol. The employer urges a mechanical construction of Iowa Code section 123.47, concerning making alcohol available to a minor, as part of its argument that Ms. Malanaphy not only was discharged for misconduct, but broke the law. The employer provided no evidence indicating that Ms. Malanaphy had been charged or convicted of a criminal offense at the time of discharge or later. The Code section the employer points to prohibits selling, giving, or otherwise supplying alcohol to minors. The greater weight of the evidence fails to indicate that Ms. Malanaphy sold the alcohol to the underage coworker or that

she gave it to him. The term “otherwise supply” implies that the alcohol is being supplied for the underage person’s consumption or some other illegal purpose. The facts in evidence indicate that Ms. Malanaphy intended only to use the coworker to transport the alcohol to a person of legal age to consume it. Under the employer’s logic, the employer would be breaking the law every time it had a clerk transport alcohol out to a customer’s car. For obvious reasons, such logic is not sound. The greater weight of the evidence indicates that Ms. Malanaphy made a good-faith error in judgment at a time when she was under unusual emotional stress. The administrative law judge notes that this was an isolated incident. Though the decision to discharge Ms. Malanaphy was within the employer’s discretion, a good-faith error in judgment is not misconduct and would not disqualify Ms. Malanaphy for benefits. See 871 IAC 24.32(1)(a).

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

**DECISION:**

The Agency representative’s January 2, 2007, 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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