

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELLE PARIS

Claimant

APPEAL NO. 16A-UI-09146-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PELLA CORPORATION

Employer

OC: 07/31/16

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 August 16, 2016, 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 had been discharged on July 29, 2016 for conduct that did not constitute a current act. After due notice was issued, a hearing was held on September 8, 2016. Claimant Michelle Paris did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Julie Wolf represented the employer and presented additional testimony through Robert Rasmussen and Kevin Poort. The administrative law judge took official notice of the agency's record of benefits disbursed to the claimant and received Exhibits Two through Six 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: Michelle Paris was employed by Pella Corporation as a full-time "General Specialist" production worker from 2007 until July 28, 2016, when the employer discharged her for falsifying her educational history on her employment application. Ms. Paris completed an application for employment with Pella Corporation on January 3, 1999, but was not hired at that time. On the January 3, 1999 application, Ms. Paris indicated she had attended high school in Nebraska City and wrote "yes" in response to the question that asked whether she had graduated. On June 5, 2016, Ms. Paris completed the employment application that led to her employment. On that application, Ms. Paris wrote that she had completed the 9th grade, but also circled GED as her highest

education level. Ms. Paris had not graduated from high school and had not obtained a general education diploma. The employer requires employees to possess a high school diploma or the equivalent to be employed by the company. Ms. Paris was able to perform her work duties for nine years before the employer discharged her for providing false information on her job application. Ms. Paris' lack of a high school diploma had no impact on her ability to perform her work for the employer.

Ms. Paris' lack of a high school diploma came to the employer's attention on July 27, 2016, when a coworker reported that Ms. Paris had said she was smarter than newly hired employers and referenced her lack of a high school diploma. Ms. Paris' comment came to the employer's attention when a coworker alleged that Ms. Paris intimidated coworkers when assigned to train them. Some other current and/or former coworkers made similar allegations. Ms. Paris denied the allegations.

The employer did not deem that allegations of intimidation to warrant discharge from the employment, but deemed the falsification of the job application to warrant discharge. The employer's written policies prohibited falsifying company documents. The policy was contained in the handbook the employer had most recently provided to Ms. Paris in February 2015.

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).

Iowa Admin. Code r. 871-24.32(6) provides:

Discharge for misconduct.

(6) False work application. When a willfully and deliberately false statement is made on an Application for Work form, and this willful and deliberate falsification does or could result in endangering the health, safety or morals of the applicant or others, or result in exposing the employer to legal liabilities or penalties, or result in placing the employer in jeopardy, such falsification shall be an act of misconduct in connection with the employer.

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 fails to establish misconduct in connection with employment that would disqualify Ms. Paris for unemployment insurance benefits. The weight of the evidence establishes that the employer used the false work application as a pretext for discharging Ms. Paris from the nine year employment after concluding that the allegations of intimidation did not provide a sufficient basis for discharging Ms. Paris from the employment. The misstatement of Ms. Paris' high school academic credentials did not endanger the health, safety or morals of Ms. Paris or others in the workplace and did not place Ms. Paris or others at risk of such endangerment. Nor did the erroneous job application information expose the employer to legal liability or jeopardy. On the contrary, Ms. Paris demonstrated the ability to perform her duties over the course of a nine-year employment without incident until some coworkers complained that they found her to be intimidating. The employer submitted insufficient evidence to establish that Ms. Paris did indeed intentionally intimidate coworkers. The employer elected not to present testimony or even a written statement from any current or former employee or temp worker who alleged Ms. Paris had mistreated coworkers. The employer had the ability to present such testimony.

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

DECISION:

The August 16, 2016, reference 01, decision is affirmed. The claimant was discharged on July 28, 2016 for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs