

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARGARET R BROOKS**

Claimant

**APPEAL NO. 15R-UI-10877-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EGS CUSTOMER CARE INC**

Employer

**OC: 07/26/15**

**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

This matter was before the administrative law judge for a new hearing upon remand by the Employment Appeal Board in Hearing Number 15B-UI-09338. The remand followed a September 2, 2015 appeal hearing in which the claimant participated, but the employer did not. The September 2, 2015 appeal hearing resulted in a September 3, 2015 decision in appeal number 15A-UI-09338-JP-T 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 the administrative law judge's conclusion that the claimant has been discharged for no disqualifying reason. The claimant is referenced as the appellant in above captioned because the claimant had appealed, in appeal number 15A-UI-09338-JP-T, from the August 13, 2015, reference 01, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that she had been discharged on July 23, 2015 for violation of a known company rule. Notices of hearing were mailed to the parties' last-known addresses of record for a new telephone hearing to be held at 11:00 a.m. on October 15, 2015. Claimant Margaret Brooks participated. The employer failed to respond to the hearing notice instructions to provide a telephone number at which a representative could be reached for the hearing and did not participate.

**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: Margaret Brooks was employed by EGS Customer Care, Inc., formerly known as APAC Customer Services, Inc., as a full-time customer service representative from 2012 until July 24, 2015, when the employer discharged her for suspicion of consuming alcohol and/or being under the influence of alcohol at work. The employer alleged that a coworker had observed Ms. Brooks consuming alcohol in the employer's parking lot. When the employer confronted Ms. Brooks on

July 23, 2015, Ms. Brooks denied that she had been consuming alcohol and asked the employer for a breath alcohol test. The employer did not provide a breath alcohol test.

### **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.

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 employer failed to participate in the appeal hearing and, thereby, failed to present any evidence to support the allegation that Ms. Brooks was discharged for misconduct in connection with the employment. The evidence in the record is insufficient to establish misconduct based on an alleged alcohol violation or otherwise. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Brooks was discharged for no disqualifying reason. Accordingly, Ms. Brooks is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

**DECISION:**

The August 13, 2015, reference 01, decision is reversed. The claimant was discharged on July 24, 2015 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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