

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHANNON MERCER
Claimant

APPEAL NO. 13A-UI-09726-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEERY BROTHERS INC
Employer

**OC: 07/21/13
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 14, 2013, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on September 26, 2013. Claimant Shannon Mercer participated. Jackie Nolan of Employer's Unity represented the employer and presented testimony through Ron Bennett and Terry Mertens. Exhibits One through Six were received into evidence.

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: Shannon Mercer was employed by Deery Brothers, Inc., as a full-time warranty administrator until July 11 2013, when the employer discharged her from the employment. Ms. Mercer had started with the employer in 1997. Ms. Mercer was the Rental Manager during the last 13 years of her employment. Ms. Mercer was the warranty administrator during the last five years of the employment. Ms. Mercer also served as the service administrator. Ms. Mercer's immediate supervisor was Ron Bennett, Fixed Operations Manager.

The final incident that triggered the discharge concerned Ms. Mercer's disagreement with a new person she was assigned to train as the new warranty administrator. The employer was preparing to put Ms. Mercer in charge of a service call center that Ms. Mercer was helping to launch. The disagreement arose when Ms. Mercer attempted to impress upon the new employee the need to get warranty related documentation to her and other office personnel in a timely manner. Ms. Mercer was motivated by a desire to make certain that no warranty documentation got lost. The new employee took offense and got upset at Ms. Mercer's approach to the issue. After the employer became aware of the disagreement, the employer interviewed the new employee. The employer then summoned Ms. Mercer to a meeting and discharged her from the employment.

In making the decision to discharge Ms. Mercer from the employment, the employer considered another interaction between Ms. Mercer and a service technician. The employer had a policy that if a customer had to wait longer than 30 minutes for an oil change the oil change would be free. In May 2013, Ms. Mercer assisted a customer who was having to wait an extended time for their vehicle to have the oil changed. Ms. Mercer went to the service bay and told the service technician that he needed to finish the work on the vehicle. The service technician was offended by Ms. Mercer's approach to the matter.

The employer had other concerns that included concerns about not getting reports in a timely manner. Ms. Mercer had recently absorbed the work load of another employee and was kept very busy by the competing responsibilities the employer had placed on her. When forced to choose between tasks, Ms. Mercer prioritized customer service at the expense of other less pressing duties.

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).

The weight of the evidence in the record indicates that Ms. Mercer did not engage in any misconduct in connection in her dealings with the new employee. Rather, Ms. Mercer was attempting to serve the employer's interests by making certain that warranty information did not get lost just because the new employee did not want to walk extra steps to forward it. The evidence indicates that the employer placed many responsibilities on Ms. Mercer's shoulders and did so because of her driven personality. The many duties may well have resulted in Ms. Mercer being less patient and more demanding in her dealings with other employees. Ms. Mercer's actions in those incidents cited by the employer did not rise to the level of misconduct. The amount of work and various duties the employer assigned to Ms. Mercer forced her to prioritize her efforts. The fact that Ms. Mercer did not prioritize the competing duties the same way the employer would have was not misconduct. See Richers v. Employment Appeal Board, 479 N.W.2d 308 (Iowa 1991).

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

DECISION:

The agency representative's August 14, 2013, 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs