

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGEL M HUEBBE
Claimant

APPEAL NO. 16A-UI-12922-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEERY BROTHERS INC
Employer

OC: 11/06/16
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Angel Huebbe filed a timely appeal from the November 30, 2016, reference 01, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on an agency conclusion that Ms. Huebbe was discharged on November 10, 2016 for misconduct in connection with the employment. After due notice was issued, a hearing was held on December 21, 2016. Ms. Huebbe participated. Carolyn Karetis of Employers Unity represented the employer and presented testimony through Jim Smith and Mike Heiniger. Exhibits 1 through 7 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: Angel Huebbe was employed by Deery Brothers, Inc., an auto dealership, from October 2015 until November 10, 2016, when the employer's management team discharged her from the employment. The employer hired Ms. Huebbe to perform clerical support work in the service department. About six months into the employment, the employer assigned Ms. Huebbe to the service department's call center. The employment was full-time. The work hours began as 8:00 a.m. to 5:00 p.m., but became 8:30 to 5:30 p.m., Monday through Friday. Brad Heuvelmann, Production Manager, was Ms. Huebbe's immediate supervisor.

Ms. Huebbe's duties in the call center included primary responsibility for responding in a timely manner to service-related text messages that customers sent to a designated cell phone. The cell phone was kept at Ms. Huebbe's work station. On the morning of November 9, 2016, Jim Smith, Warranty Manager, received a phone call from an upset customer who had been sending text messages for five days in a row without receiving a response from Ms. Huebbe. In connection with taking the call, Mr. Smith retrieved the cell phone to which the messages had been directed and reviewed the messages. Immediately following the call, Mr. Smith momentarily left the cell phone with Ms. Huebbe. Mr. Smith told Ms. Huebbe to hold on to the cell phone and that he would be right. Ms. Huebbe immediately deleted the entire text message file from the cell phone to prevent the employer from reviewing the text message record and to

hinder the employer's investigation of the matter. When Mr. Smith returned, he discovered that the text message record had been deleted. At that time, Ms. Huebbe claimed that the text message file was full and that she had deleted the file for that reason. However, the text message file was not full and there was no legitimate reason for Ms. Huebbe to delete the messages.

While the above incident was the primary basis for the discharge, the employer also considered prior concerns and associated reprimands. In September 2016, the employer reprimanded Ms. Huebbe after she violated the employer's personal cell phone use policy and misplaced her work keys. The work keys provided access to the service department cash drawer and access to the keys to customers' vehicles. In April 2016, the employer reprimanded Ms. Huebbe for telling a customer that the dealership's car wash was not functioning. The customer had driven a great distance and was perturbed to find the car wash inoperable. Ms. Huebbe relied upon an assertion by a coworker that the car wash was inoperable.

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 weight of the evidence establishes misconduct in connection with the employment based on Ms. Huebbe’s intentional deletion of the text message record on November 9, 2016. The weight of the evidence establishes that Ms. Huebbe knowingly and intentionally deleted the record to prevent the employer from further reviewing the record as part of its investigation of the customer’s complaint that he had been sending text messages over the course of several days without a response from Ms. Huebbe. Ms. Huebbe’s actions demonstrated an intentional and substantial disregard of the employer’s interests. Because the final incident involved intentional and substantial misconduct, the administrative law judge need not further consider the prior matters that factored in the discharge.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Huebbe was discharged for misconduct. Accordingly, Ms. Huebbe is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. Ms. Huebbe must meet all other eligibility requirements. The employer’s account shall not be charged.

DECISION:

The November 30, 2016, reference 01, decision is affirmed. The claimant was discharged for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until she has worked in and paid wages for insured work equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer’s account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs