

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DEBBIE K TENDAL**  
Claimant

**APPEAL NO. 17A-UI-04476-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**  
Employer

**OC: 04/09/17**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Debbie Tendal filed a timely appeal from the April 24, 2017, reference 01, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on the claims deputy's conclusion that she was discharged on April 6, 2017 for violation of a known company rule. After due notice was issued, a hearing was held on May 16, 2017. Ms. Tendal participated. Rob Wells, Area Supervisor, represented the employer. Exhibits 1 and 3 through 8 were received into evidence.

**ISSUES:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

Whether the evidence establishes a current act of misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Debbie Tendal was employed by Casey's Marketing Company as a full-time Store Manager at one of the employer's Sioux City stores until April 6, 2017, when Rob Wells, Area Supervisor, discharged her from the employment. Ms. Tendal began her employment with Casey's in 2014 and was promoted to Store Manager in 2006. Mr. Wells became Ms. Tendal's immediate supervisor in 2011.

On March 10, 2017, Mr. Wells issued a written reprimand to Ms. Tendal after an employee complained to him that Ms. Tendal would use inappropriate language when she was upset with employees. Two employees alleged that Ms. Tendal would refer to employees as idiots and stupid. During the disciplinary discussion, Ms. Tendal had stated that she did not think she could change. As part of the same disciplinary discussion, Mr. Wells issued a separate written reprimand to Ms. Tendal for allegedly telling employees only to limit the time product was left in a warmer display when Mr. Wells or the district manager was in the store. In June 2015, Mr. Wells had issued a reprimand to Ms. Tendal after she touched, allegedly grabbed, an employee to show him where some product was located.

On April 5, 2017, Mr. Wells followed up with the two employees. Mr. Wells had also followed up with one of the employees on March 22, 2017. On April 5, the two employees alleged that nothing had changed since the reprimand, but offered no specifics. On April 6, 2017, Mr. Wells met with Ms. Tendal. Mr. Wells asserted that behavior that had been at issue a month earlier was still occurring and that the store employees were unhappy with the way they were being treated. Ms. Tendal replied, "I haven't said a goddamned thing to anyone since you wrote me up." Mr. Wells reminded Ms. Tendal of her comment on March 10 about not thinking she could change. Mr. Wells told Ms. Tendal that he was making the business decision to end her employment.

## **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 employer had presented insufficient evidence, and insufficiently direct and satisfactory evidence, to establish a current act of misconduct in connection with the employment. The hearsay and unspecific allegations made by the two employees on April 5 that nothing had changed since the March 10 reprimand is not proof by the preponderance of the evidence that Ms. Tendal had indeed engaged in any inappropriate conduct since the March 10 reprimand. The employer had the ability to present testimony from the two employees whose allegations prompted the discharge, but elected not to present such testimony. In the absence of proof of a current act of misconduct, the April 6, 2017, would not disqualify Ms. Tendal for unemployment insurance benefits. Ms. Tendal is eligible for benefits provided she meets all other eligibility requirements. The employer's account may be charged.

**DECISION:**

The April 24, 2017, reference 01, decision is reversed. The claimant was discharged on April 6, 2017 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

jet/scn