

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHANIE L WHITEFIELD
Claimant

APPEAL NO. 13A-UI-09908-JT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMCOR RIGID PLASTICS USA INC
Employer

**OC: 07/28/13
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Stephanie Whitefield filed a timely appeal from the August 19, 2013, reference 01, decision that denied benefits. After due notice was issued, an in-person hearing was held in Des Moines on October 8, 2013. Ms. Whitefield participated. David Williams of Equifax Workforce Solutions represented the employer and presented testimony through Jolene Malone, Lona Graham and Wayne McCabe. Exhibits 1 through 10 and A 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: The employer manufactures plastic beverage containers. Stephanie Whitefield was employed by Amcor Rigid Plastics USA, Inc., as a full-time machine operator from 2008 until July 29, 2013, when Wayne McCabe, Production Manager, discharged her from the employment. Because of the nature of product the employer produces, the employer has multiple policies in place to prevent vermin from entering or being attracted to the production area. The employer restricted employees' consumption of food and drink to designated areas, including a break room area. The employer provided an area near the entrance of the facility where employees could store food and drink that they brought to the facility. Ms. Whitefield was aware of the policies restricting food and drink and had received appropriate training.

On July 25, 2013, the employer's facility was inspected as part of the Global Food Safety Initiative program. The employer had certified as a GFSI manufacturer in 2012 and the inspection on July 15, 2013 was the employer's first annual GFSI audit. The employer had a month's notice of the audit. In preparation of the GFSI audit, the employer warned employees that the audit would be taking place and, on July 3, 2013, warned employees that all lockers would be inspected during the first two weeks of July.

On July 25, 2013, Lona Graham, Quality Assurance Manager, accompanied the GFSI auditor as the auditor inspected the Amco facility. When they entered the women's locker room, a previously opened screw top beverage container belonging to Ms. Whitefield was sitting on the bench. In addition, inside Ms. Whitefield's open locker, on the base of the locker, was an open bag of potato chips. Ms. Whitefield's employee badge was hanging in locker. The GFSI auditor immediately advised Ms. Graham that the food and beverage items were in violation of the GFSI standards. Ms. Graham had to continue with the auditor, but notified Jolene Malone, Human Resources Manager, of the critical violation of the GFSI standards. Wayne McCabe, Production Manager, met with Ms. Whitefield that day. Ms. Whitefield acknowledged the items were hers, indicated prior knowledge of the employer's policy, and stated that she knew such items were prohibited in the locker room area. Ms. Whitefield made no mention during that discussion about the food and drink policy being routinely violated by other employees or any lax enforcement of the policy by the employer.

On July 29, 2013, Ms. Malone and Mr. McCabe met with Ms. Whitefield for the purpose of discharging her from the employment. In making the decision to discharge Ms. Whitefield, the employer also considered an incident on June 17, 2013. On June 17, the employer needed to clean up after a fire. When Ms. Whitefield learned that she would be cleaning that day, rather than performing her regular machine operating duties, she announced to coworkers, "This is fucking bullshit." Ms. Graham overheard the comment. The employer's written policies prohibited use of profanity in the workplace. The employer suspended Ms. Whitefield in connection with the outburst and warned that future policy infractions could result in discharge from the employment.

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).

At first glance, and to Ms. Whitefield, possessing and leaving the food and beverage items in the locker room might seem insignificant. However, Ms. Whitefield worked in a facility that manufactured beverage containers destined to be filled with beverages that people would later consume. The employer's concern with cleanliness and pest control is understandable. The employer had sought and obtained special certification for its facility through the Global Safe Food Initiative. Ms. Whitefield had ample warning that the GFSI inspection was imminent and a reminder that no food, beverage, or other potentially contaminating items were to be in the locker room area. Despite all of that, Ms. Whitefield elected to violate the employer's policy by taking open bag of chips and a previously opened bottle of tea into the locker room. Not only that, but she left both items in plain view. While Ms. Whitefield argues that leaving the items in the locker room was inadvertent, taking them into the locker room, in violation of the employer's policy, was an intentional violation of the employer's policies. Ms. Whitefield's intentional conduct undermined the employer's efforts to pass the GFSI audit. Under the circumstances, Ms. Whitefield's conduct constituted substantial misconduct in connection with the employment. Though the prior incident was unrelated to the incident that triggered the discharge, it too indicates a disregard for the employer's interests. In addition, the final incident occurred at a time when Ms. Whitefield knew her employment was in jeopardy based on the June reprimand and suspension.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Whitefield was discharged for misconduct. Accordingly, Ms. Whitefield is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits.

DECISION:

The agency representative's August 19, 2013, reference 01, decision is affirmed. The claimant was discharged for misconduct. 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 allowance, provided she meets all other eligibility requirements. The employer's account will not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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