

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI	
BILLIE J EDWARDS Claimant	APPEAL NO. 19A-UI-04418-JTT
CASEY'S RETAIL COMPANY Employer	ADMINISTRATIVE LAW JUDGE DECISION
	OC: 05/05/19 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 May 20, 2019, reference 01, decision that allowed benefits to the claimant provided she met all other eligibility requirements and that held employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on May 6, 2019 for no disqualifying reason. After due notice was issued, a hearing was commenced on June 25, 2019 and concluded on June 27, 2019. Claimant Billie Edwards participated. Bo Knop represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1, 2, 4 and 5 into evidence. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

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: Billie Edwards was employed by Casey's Retail Company as a full-time Area Manager until May 6, 2019, when the employer discharged her from the employment for alleged fraternization with a subordinate and for alleged violation of the employer's code of conduct policy. The relevant text of the employer's non-fraternization policy states as follows:

[E]mployees having personal relationships may not be employed in a direct supervisor/subordinate situation or under any circumstances which the Company deems inappropriate. Examples of personal relationships may include supervisors who regularly socialize with subordinate employees outside of work, dating, sharing living accommodations, common law marriage, or any perceived intimate companionship regardless of sexual orientation. ... The term supervisor shall include, but is not limited to, manager, assistant manager, second assistant manager, training manager, team leader, area supervisor, district manager, regional manager and the like.

...

Managers/supervisors violating the non-fraternization policy or who fail to immediately report their involvement in a personal relationship with a subordinate employee will receive corrective action, up to and including termination of employment.

On Friday, May 3, 2019, Ms. Edwards went to the downtown area of Des Moines to enjoy an evening out with friends. The evening out included consumption of alcohol. The employer lacked a work rule that would prohibit Ms. Edwards from consuming alcohol when off-duty. While Ms. Edwards was socializing with her friends, she ran into Casey's Store Manager Jeffrey Gahman. Mr. Gahman manages a Casey's store in Grimes. Ms. Edwards was Mr. Gahman's immediate supervisor. Ms. Edwards and Mr. Gahman exchanged greetings, but each continued to socialize with their respective groups. Ms. Edwards asked Mr. Gahman whether he could give her a ride home if and when he was ready to go home. Because Ms. Edwards lived in Ankeny and Mr. Gahman lived on the west side of the Des Moines metropolitan area, Mr. Gahman, Ms. Edwards home was not on Mr. Gahman's way home and would require a detour to Ankeny. When Ms. Edwards was ready to go home at the end of evening of drinking, she had lost contact with the friends she had gone out with and was in need of a ride home. Ms. Edwards had by that time consumed eight glasses of beer and two shots of whiskey. Ms. Edwards tried unsuccessfully to contact her friends for a ride. Ms. Edwards then contacted Mr. Gahman and asked for a ride home. Mr. Gahman agreed to give her a ride home. Mr. Gahman did not act put-out by the request and at no point suggested to the employer that Ms. Edwards had pressured him in any way to give her a ride home. As Mr. Gahman was nearing Ms. Edwards home, a law enforcement official stopped Mr. Edwards vehicle for speeding and for suspicion of operating while intoxicated. In the course of the investigation, a law enforcement officer directed Ms. Edwards, the passenger in the vehicle, to exit the vehicle. After Ms. Edwards exited the vehicle, the law enforcement officer cited Ms. Edwards for public intoxication. The officer arrested Mr. Gahman on a charge of operating while intoxicated.

Ms. Edwards waited until Sunday morning, May 5, to notify her supervisor, District Manager Bo Knop, of the incident. Mr. Knop advised he would look into the matter, but that it did not look good. On the next day, Mr. Knop discharged Ms. Edwards from the employment.

In making the decision to discharge Ms. Edwards from the employment, the employer considered its Employee Conduct policy. The introductory paragraph of that policy states as follows:

It is the policy of the Company that an employee's behavior be appropriate to the work situation, contributing to the customer-service orientation we strive to create and presenting a friendly, cooperative work environment to coworkers.

The policy does not refer to off-duty conduct, but makes reference to "violating the Code of Business Conduct and Ethics" and an example of inappropriate conduct.

The employer also considered the Code of Business Conduct and Ethics when making the decision to discharge Ms. Edwards from the employment. That multiple-page policy statement begins with a statement that the policy is intended to promote "Honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relations..." The policy goes on to state that "Casey's and its employees are required to comply, both in letter and in spirit, with all applicable local, state and federal laws and regulations, including, without limitation, employment, discrimination, health, safety, antitrust, securities and environmental laws." The policy does not specify whether the expectation that employees comply with the law extends to off-duty conduct. The policy goes on to state that employees are to adhere to high ethical standards and avoid conflicts of interests. The employer's definition of a conflict of interest includes the following:

A conflict of interest may occur when outside activities or personal interests interfere or appear to interfere with an employee's ability to objectively perform their job or act in the best interest of Casey's. All financial, business and other activities, both inside and outside an employee's job, must be lawful and free of conflicts or even the suggestion of a conflict with their responsibilities as a Casey's employee.

As an area manager, Ms. Edwards was expected not only to comply with company policies, but to enforce those policies on behalf of the employer. Ms. Edwards was well familiar with the policies the employer considered in discharging her from the employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

Violation of a specific work rule, even off-duty, can constitute misconduct. In *Kleidosty v. EAB*, 482 N.W.2d 416, 418 (Iowa 1992), the employer had a specific rule prohibiting immoral and illegal conduct. The worker was convicted of selling cocaine off the employer's premises. The Court found misconduct. In its analysis, the Court stressed the importance of a specific policy, even one which was stated only in terms of illegal or immoral conduct.

The evidence in the record establishes a discharge for no disqualifying reason. The employer had a legitimate concern about the poor judgment Ms. Edwards demonstrated on May 3 by drinking in excess, being charged with public intoxication, and being with Mr. Gahman at the time of the charge. The employer had a specific written rule that prohibited off-duty fraternization with subordinates. Ms. Edwards did not violate the employer's fraternization policy. Ms. Edwards merely requested and received a ride home. Ms. Edwards was not in a personal relationship with the subordinate and did not "regularly socialize" with the subordinate. The employer did not have a specific policy that prohibited Ms. Edwards from consuming alcohol while off-duty, but did have conduct and conflict of interest policies that put Ms. Edwards on notice that her off-duty conduct could be a basis for discipline. After considering the context and totality of the circumstances, that administrative law judge concludes that this isolated incident of very poor judgment did not involve a willful and wanton disregard of the employer's interests that would disqualify Ms. Edwards for unemployment insurance benefits.

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

DECISION:

The May 20, 2019, reference 01, decision is affirmed. The claimant was discharged on May 6, 2019 for no disqualifying reason. The claimant is eligible for benefits, provided she meets all other eligibility requirements. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs