

February 3, 2003 until September 27, 2005. She was a full-time retail consultant. Employees are not provided with a handbook of the employer's policies and procedures, but these are accessible on the store computer. The policies may be printed out by the employees if they choose. One policy prohibits employees from servicing the account of a relative.

During the course of her employment Ms. Schliske had three different managers, each of whom enforced the policy in different ways. One felt the policy was limited to customers with whom the employee shared a dwelling. The second did not enforce it much at all, concentrating on customer service. Ms. Hruska became manager and issued an e-mail to all employees on September 9, 2005, reminding them of the policy and that they were not to service the account of any relative.

On September 26, 2005, the claimant's cousin came to the store with a question about insurance. Ms. Schliske asked Ms. Hruska about it and was told to contact corporate customer service, which she did. The account was handled by customer service but the manager questioned the claimant to make sure she had heard correctly that the customer was her cousin and the claimant acknowledged it was. She then realized this constituted a "relative."

Ms. Hruska checked the customer's account and saw that Ms. Schliske had serviced it various times from January through July 1, 2005. She discharged the claimant on September 27, 2005, for violation of the policy.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The claimant was discharged for violation of a company policy. Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Newman v. IDJS, 351 N.W.2d 806 (Iowa App. 1984). The administrative law judge concludes the claimant's actions do not rise to the level of substantial, job-related misconduct for two reasons.

First, the policy was not enforced the same way by all managers. This makes it difficult for an employee to know the parameters of the policy and to know exactly what is expected to stay within the policy requirements. Misconduct requires a willful and deliberate course of conduct contrary to the employer's best interests.

Second, the last time the claimant serviced her cousin's account was nearly three months before she was discharged. The above Administrative Code section requires there to be a current, final act of misconduct which precipitates the decision to discharge and there is none in this case. The manager only discovered the act when she looked at the customer's account. The only final act was the claimant referring the question of the insurance to corporate customer service under the instructions of her manager and this is not misconduct. Disqualification may not be imposed.

#### DECISION:

The representative's decision of October 13, 2005, reference 01, is affirmed. Deanna Schliske is qualified for benefits, provided she is otherwise eligible.

bgh/pjs