

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAMELA S TRUMBULL
Claimant

APPEAL NO. 10A-UI-06918-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**FRONTIER COOPERATIVE HERBS
FRONTIER NATURAL PRODUCTS COOP**
Employer

**Original Claim: 04/11/10
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Pamela Trumbull filed a timely appeal from the May 6, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on June 28, 2010. Ms. Trumbull participated. Nancy Hinkel, Director of Human Resources, represented the employer and presented additional testimony through Mike Otter, Plant Manager.

ISSUE:

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: Pamela Trumbull was employed by Frontier Natural Products Coop as a full-time machine operator from 2004 until April 8, 2010, when Rick Hook, Supervisor, and Nancy Hinkel, Director of Human Resources, discharged her from the employment. Mr. Hook was Ms. Trumbull's immediate supervisor.

On April 7, 2010, supervisor Rick Hook noticed that an employee, Lois Schulte, was visibly upset and took her into his office to inquire about the circumstances. Ms. Schulte had been working with Ms. Trumbull that day and became upset after interacting with Ms. Trumbull. Ms. Schulte was one in a series of employees that the employer assigned to assist Ms. Trumbull and operating a particular machine. While the women were working together, Ms. Trumbull made the comment that Ms. Schulte had been working on the machine for over three weeks and should know what she was doing. While Ms. Schulte was relatively new to working on that machine, she had worked for the employer for about two decades. On April 8, Mr. Hook and Ms. Hinkel summoned Ms. Trumbull to a meeting and discharged her from the employment. The employer did not investigate the final incident beyond speaking with Ms. Schulte and instead assumed that Ms. Trumbull had lost her temper and yelled at Ms. Schulte. Ms. Trumbull had not raised her voice or used profanity in addressing Ms. Schulte. Ms. Trumbull had been frustrated that the employer continued to assign employees to assist her with operating her machine; had been frustrated that since she was the only

one who knew how to operate the machine, she ended up doing the bulk of the work; and had been frustrated that the employer would reassign the employee once they had learned how to operate the machine.

In making the decision to discharge Ms. Trumbull from the employment, the employer considered a reprimand issued to Ms Trumbull in April 2008 and a reprimand issued in November 2009. Both reprimands were issued by Mr. Hook. The employer issued the April 2008 reprimand in response to an alleged display of anger toward a coworker and supervisor. Mike Otter, Plant Manager, was present at the meeting to issue the reprimand. Ms. Trumbull and Mr. Hook began to talk over each other and Mr. Otter had to step in. Once Mr. Otter took over, he was able to convey the employer's concern and Ms. Trumbull received the reprimand without incident. This interaction exemplified the ongoing personality conflict between Ms. Trumbull and Mr. Hook. Mr. Hook issued the November 2009 reprimand in response to Ms. Trumbull allegedly throwing boxes and yelling at a coworker. Ms. Trumbull had been working with another employee using a box stamping device and had thrown boxes up onto the counter so that they could be stamped. Ms. Trumbull denies yelling at the other employee.

Mr. Hook and Ms. Schulte continue with the employer.

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).

The employer has presented insufficient evidence, and insufficiently direct and satisfactory evidence, to establish misconduct in connection with the final incident that prompted the discharge. The mere fact that Ms. Schulte may have appeared upset after working with Ms. Trumbull does not establish that Ms. Trumbull did anything abusive or bullying to Ms. Schulte. The administrative law judge cannot extrapolate from an April 2008 incident or a November 2009 incident that Ms. Trumbull did something inappropriate rising to the level of misconduct on April 7, 2010. Ms. Trumbull was the only witness who testified from personal knowledge concerning the exchange between herself and Ms. Schulte. The employer could have presented testimony from Ms. Schulte, but elected not to. The employer could also have provided testimony from Mr. Hook or from a human resources representative who became involved in the matter, but elected not to present such testimony. During the hearing, the administrative law judge pressed Ms. Trumbull somewhat regarding the hearing procedure and found her essentially unperturbed. This observation would be inconsistent with someone with a short fuse and a bullying demeanor. The evidence fails to establish a current act of misconduct. The administrative law judge must conclude that Ms. Trumbull was discharged for no disqualifying reason. Ms. Trumbull is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Trumbull.

DECISION:

The Agency representative's May 6, 2010, reference 01, decision is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw