

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LORI A WEAVER**

Claimant

**APPEAL NO. 07A-UI-08391-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EQUITY ASSOCIATES INC REALTORS**

Employer

**OC: 11/26/06 R: 03  
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Equity Associates, Inc., filed an appeal from a representative's decision dated August 23, 2007, reference 05, which held that no disqualification would be imposed regarding Lori Weaver's separation from employment. After due notice was issued, a hearing was held by telephone on September 26, 2007. Ms. Weaver participated personally. The employer participated by Robert Miell, President, and Jackie Varner, Painter. Exhibits One through Four were admitted on the employer's behalf.

**ISSUE:**

At issue in this matter is whether Ms. Weaver was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Weaver was employed by Equity Associates, Inc. from April 2 until June 25, 2007. She was hired to work full time cleaning and painting. On June 25, Robert Miell presented Ms. Weaver with a document entitled "Mutual Termination" whereby the parties agreed to go their separate ways. Ms. Weaver had given no indication that she wanted to leave the employment. The document was the employer's idea and was prompted by the belief that Ms. Weaver had falsified her timecard for the period ending June 22. As of June 25, she could only remain in the employment if she agreed to accept pay for fewer hours than she indicated on her timecard. Ms. Weaver would not agree to less pay because she had worked the actual hours on her timecard. She did balk at having to sign the agreement.

During a prior pay period, the employer deducted 16 hours from Ms. Weaver's pay based on the belief that she had not worked the number of hours claimed. She denied that the hours presented were false. Ms. Weaver's supervisors did not keep any records concerning her arrival and departure times or when she took lunch breaks. On the timecard for the period ending June 22, she wrote down the true hours worked but added them incorrectly. She

indicated a total of 38 hours but the hours actually totaled 35.5 hours. It was the employer's belief that she did not work more than 35.5 hours during the period ending June 22.

#### **REASONING AND CONCLUSIONS OF LAW:**

The parties disagree as to whether the separation was a quit or a discharge. The employer initiated the separation when Ms. Weaver was presented with a mutual termination document to sign. Ms. Weaver had not indicated any desire to leave the employment and balked at having to sign the document. She could not remain in the employment unless she agreed to accept less pay than she had earned. Because she would not agree to do so, the employment ended. For the above reasons, the administrative law judge concludes that she was discharged from the employment.

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Weaver was discharged based on an allegation that she falsified her timecard. The employer has failed to establish this contention to the satisfaction of the administrative law judge. The employer testified that Ms. Weaver worked no more than 35.5 hours during the pay period ending June 22. Although her math was in error, the actual hours reported on the timecard was 35.5 hours. Since she wrote down the actual hours worked, the administrative law judge cannot conclude that her math error was an intent to receive pay for more hours than worked. The employer did not present any evidence to establish that she worked less than 35.5 hours for the period ending June 22. The employer did not keep any records concerning her comings and goings. Inasmuch as the employer failed to establish any falsification with regard to the June 22, timecard, the administrative law judge concludes that the discharge was not prompted by an act of misconduct.

The employer alleged that Ms. Weaver had falsified the timecard submitted on May 29, an allegation she denied. The administrative law judge need not determine if there was a falsification on that date. While past acts may be considered in determining the magnitude of a current act, there must be a current act of misconduct to support a disqualification from benefits. See 871 IAC 24.32(8). Even if there was a falsification on May 29, it would not constitute a current act in relation to the June 25 discharge date.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that the employer has failed to sustain its burden of proving disqualifying misconduct. Accordingly, benefits are allowed.

**DECISION:**

The representative's decision dated August 23, 2007, reference 05, is hereby affirmed. Ms. Weaver was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

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