

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELLE D MCKINNEY
Claimant

APPEAL NO. 17A-UI-04163-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SNAP-ON LOGISTICS COMPANY
Employer

OC: 03/19/17
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Michelle McKinney filed a timely appeal from the April 6, 2017, reference 01, decision that disqualified Ms. McKinney for benefits and that relieved the employer of liability for benefits, based on the claims deputy's conclusion that Ms. McKinney was discharged on March 21, 2017 for conduct not in the best interest of the employer. After due notice was issued, a hearing was held on May 25, 2017. Ms. McKinney participated. The employer was not available at the number the employer registered for the hearing and did not participate in the hearing. The administrative law judge made two attempts to reach the employer representative, Jodi Rath, at the number the employer had registered for the hearing. Ms. Rath did not answer either call. The administrative law judge left a voicemail message for Ms. Rath in connection with each call. At the request of Ms. McKinney, the administrative law judge took official notice of the fact-finding materials that were labeled as Department Exhibits D-1 through D-14. A copy of the fact-finding materials was provided to the parties in advance of the appeal hearing.

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: Michelle McKinney was employed by Snap-On Logistics Company as a full-time warehouse receiving associate from 2013 until March 21, 2017, when Jodie Rath, Human Resources Manager, and Larry Schiltz, Second Shift Supervisor, discharged her from the employment. The final incident that triggered the discharge occurred in the employer's "smoke shack" during Ms. McKinney's shift on March 20, 2017 and concerned Ms. McKinney's verbal exchange with another employee, Sarah Eubank. The interaction began with Ms. McKinney asking Ms. Eubank whether Ms. Eubank was "the one sleeping with Jenny's boyfriend." Ms. McKinney asserts that is the language she used and denies using profanity. Ms. Eubank then responded with profanity and with threats directed at Ms. McKinney. Four other employees were present in the guard shack at the time. Ms. McKinney did not report the incident to a supervisor. Ms. Eubank did report the incident to a supervisor. The employer did not interview or question Ms. McKinney regarding the incident. On March 21, 2017, Ms. Rath and Mr. Schiltz summoned Ms. McKinney to a meeting with union representatives present. Ms. Rath told Ms. McKinney

that there had been “an incident last night that was not good” and that she was letting Ms. McKinney go. Mr. Schiltz then escorted Ms. McKinney from the workplace. As Mr. Schiltz escorted Ms. McKinney out, Ms. McKinney asked why no one had asked her what had happened. Mr. Schiltz asserted that the meeting that had just occurred had been Ms. McKinney’s opportunity to speak.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

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). 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).

An employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. *Henecke v. Iowa Department of Job Service*, 533 N.W.2d 573 (Iowa App. 1995). Use of foul language can alone be a sufficient ground for a misconduct disqualification for unemployment benefits. *Warrell v. Iowa Dept. of Job Service*, 356 N.W.2d 587 (Iowa Ct. App. 1984). An isolated incident of vulgarity can constitute misconduct and warrant disqualification from unemployment benefits, if it serves to undermine a superior's authority. *Deever v. Hawkeye Window Cleaning, Inc.* 447 N.W.2d 418 (Iowa Ct. App. 1989).

Threats of violence in the workplace constitute misconduct that disqualifies a claimant for benefits. The employer need not wait until the employee acts upon the threat. See *Henecke v. Iowa Dept. Of Job Services*, 533 N.W.2d 573 (Iowa App. 1995).

The employer did not participate in the appeal hearing and did not present any evidence to meet its burden of proving, by a preponderance of the evidence, that Ms. McKinney was discharged for misconduct in connection with the employment. The employer did not present evidence to rebut Ms. McKinney's testimony. The evidence in the record establishes only that Ms. McKinney asked Ms. Eubank whether she was "sleeping with Jenny's boyfriend." That utterance was not sufficient to establish misconduct in connection with the employment. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. McKinney was discharged for no disqualifying reason. Accordingly, Ms. McKinney is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The April 6, 2017, reference 01, decision is reversed. The claimant was discharged on March 21, 2017 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/rvs