

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WALKER, KAREN, S
Claimant

APPEAL NO. 11A-UI-07417-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CASEY'S MARKETING COMPANY
CASEY'S GENERAL STORES**
Employer

**OC: 04/24/11
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Karen Walker filed a timely appeal from the May 18, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 1, 2011. Ms. Walker participated. Dawn Garrett, Store Manager, represented the employer and presented additional testimony through Lynn Pumphrey, Assistant Manager.

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: Karen Walker was employed by Casey's General Stores as a part-time cashier/kitchen employee from 2003 until April 28, 2011, when Dawn Garrett, Store Manager, discharged her from the employment for repeated intentional rudeness to customers.

On April 27, 2011, Ms. Walker was the employee designated to make pizzas to fill customers' orders. At one point during the shift, Donna McClish, Second Assistant Manager, told Ms. Walker that a customer had called in to complain that their pizza order was undercooked. Ms. McClish gave Ms. Walker the order ticket she needed to make two pizzas. When the customer arrived to pick up the replacement pizzas, the customer had not brought the undercooked pizzas with them. Ms. Walker recognized the customer whose pizza order she had redone several months earlier after the customer complained of undercooked pizzas. On April 27, the customer appeared at the store to collect the new pizzas without bringing with him the undercooked pizzas. Ms. Walker asked where the old pizzas were. The customer said he did not know he needed to bring the old pizzas. Ms. Walker challenged his statement and said he knew he was supposed to bring the old pizzas back because this was not the first time it had happened. While the customer was still in the store, Ms. Walker remarked to Ms. McClish, "They're getting all these pizzas for nothing." The customer heard comment. The next day the customer complained to Ms. Garrett about the incident. Ms. Garrett spoke to Ms. McClish, who

confirmed the customer's version of events. Ms. Garrett spoke to Ms. Walker, who denied having made the statement. Based on this incident and other prior similar incidents, Ms. Garrett discharged Ms. Walker from the employment.

In March 2011, Ms. Walker had refused a customer's evening request for a breakfast pizza. the Casey's store was supposed to make a breakfast pizza upon request any time the store was open. The customer had previously complained that the breakfast pizzas Ms. Walker made were undercooked. Ms. Walker told the customer that she would not make the requested pizza and that the customer would have to get their breakfast pizzas in the morning when someone else made them.

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 weight of the evidence establishes that Ms. Walker intentionally insulted a customer twice on April 27, 2011 all because the customer complained about an undercooked order and then neglected to bring back the bad pizzas. Ms. Walker had previously been warned about insulting customers after she had refused to fill a customer's order in March 2011 all because the customer had complained about an undercooked breakfast pizza. Ms. Walker's conduct indicated a willful disregard of the employer's interest in maintaining customers by providing courteous service, especially when a customer had a legitimate complaint about a product.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Walker was discharged for misconduct. Accordingly, Ms. Walker is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Walker.

DECISION:

The Agency representative's May 18, 2011, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs