

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CAROL A WALKER
Claimant

APPEAL NO. 14A-UI-13178-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCE PARTNERS LLC
Employer

**OC: 11/30/14
Claimant: Appellant(2)**

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

STATEMENT OF THE CASE:

Carol Walker filed a timely appeal from the December 16, 2014, reference 01, decision that disqualified her for benefits. After due notice was issued, a hearing was held on January 23, 2015. Ms. Walker participated. Sarah Gillespie, Human Resources Manager, represented the employer and presented additional testimony through Josh Cartee, Cage Manager, and Kimberly Dellinger, Human Resources Director. Exhibits One, Four, Six, A, C, D and Department Exhibits D-1 through D-4 were received into evidence.

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: Carol Walker was employed by SCE Partners, L.L.C., d/b/a Hard Rock Hotel & Casino as a full-time casino services representative (cashier) from July 2014 until December 3, 2014, when Josh Cartee, Cage Manager, discharged her from the employment for a violation of the employer's written variance policy. Ms. Walker's duties included assisting patrons with cashing in casino chips for cash. Ms. Walker had received proper training to perform her duties. During a weekday shift, Ms. Walker would handle 100 or more transactions and \$25,000.00 to \$30,000.00 during a shift. During a weekend shift, Ms. Walker might handle up to 300 transactions and up to \$50,000.00. Given the number of transactions involved, the employer expected casino services representatives to make occasional errors. It was common to have at least two cashiers per day with cash drawer variances. The employer did not deem an error involving less than \$50.00 to merit disciplinary action. Under the variance policy, variances of \$200.00 or more were to result in a suspension pending investigation with a subsequent decision regarding the employees continued employment.

The employer based its decision to discharge Ms. Walker from the employment on a single, but substantial error that occurred on December 2, 2014. On that day, Ms. Walker assisted a patron who desired to cash in seven green casino chips, each worth \$25.00. Ms. Walker took

appropriate time to process the transaction. Ms. Walker divided the patron's chips into two piles and spread the two piles, so that all of the chips were readily visible and documented on the employer's video surveillance system. One pile contained four green chips worth \$100.00 in total. The second pile contained three green chips, worth \$75.00 in total. Ms. Walker made a mental error when redeeming the four-chip pile and gave the patron \$100.00 for each of those chips instead of the \$25.00 chip value. The employer utilizes black chips that are assigned a \$100.00 value, but the patron had not presented any black chips. Ms. Walker correctly redeemed the three-chip pile and gave the patron \$75.00 for that pile. Instead of paying the patron the \$175.00 value of the chips, Ms. Walker erroneously paid the patron \$475.00. The transaction was documented on surveillance video. The patron hastily collected the money Ms. Walker had laid down and hastily departed from the cashier cage area. The patron's actions strongly suggested that he was aware of the error, of the \$300.00 windfall, and that he did not want to give Ms. Walker time or opportunity to realize her error in redeeming the chips. Ms. Walker's error was detected, in part, when she and a supervisor counted out her drawer at the end of the shift and concluded that the drawer was \$210.00 short. That count was off. The next cashier to use the same drawer detected an additional \$90.00 shortage. The supervisor notified Josh Cartee, Cage Manager, of the variance and Mr. Cartee notified Ms. Walker that she was suspended pending investigation. Mr. Cartee also told Ms. Walker that the incident could result in discharge. The next day, the employer confirmed that Ms. Walker was indeed discharged as a result of the \$300.00 variance.

While Ms. Walker had other, smaller variances, they were the sort the employer expected given the number of transactions and the amount of cash being handled. None had resulted in disciplinary action.

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).

The evidence in the record establishes a discharge based on a single error. While the incident in question clearly involved a mental lapse on Ms. Walker's part, it did not involve any willful or wanton disregard of the employer's interests. The evidence indicates that Ms. Walker performed her duties in good faith. The evidence does not indicate a pattern of carelessness or negligence that would indicate a willful or wanton disregard of the employer's interests. Though it was within the employer's discretion to discharge Ms. Walker from the employment in response to the cash dispensing error, the discharge was not based on misconduct in connection with the employment and would not disqualify Ms. Walker for benefits. Ms. Walker is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The December 16, 2014, 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/pjs