

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY TYLER
Claimant

APPEAL NO. 19A-UI-09663-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ARLINGTON PLACE OF GRUNDY CENTER
Employer

OC: 10/20/19
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Mary Tyler filed a timely appeal from the November 26, 2019, reference 02, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Ms. Tyler was discharged on September 23, 2019 for failure to follow instructions in the performance of her job. After due notice was issued, a hearing was held on January 6, 2020. Ms. Tyler participated. Kaylene Hoskins represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 19A-UI-09664-JTT. Exhibits 1 through 5 were received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits paid to the claimant (DBRO).

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: Mary Tyler was employed by Arlington Place of Grundy Center as a part-time assistant cook from December 2018 until September 23, 2019, when Christina Mulnix, Culinary Coordinator, and Kaylene Hoskins, Community Manager, discharged her from the employment. Ms. Mulnix was Ms. Tyler's immediate supervisor. Ms. Tyler usually worked from 1:00 p.m. to 7:00 p.m., three or four days per week.

The final conduct that triggered the discharge came to the employer's attention on the morning of September 21, 2019, when Ms. Mulnix arrived at work to dirty cups and dirty placemats on dining room tables, along with dirty kitchen counter tops and kitchen sinks with food pieces in them. Ms. Tyler was responsible for cleaning the dining room tables, for cleaning the place mats, and for cleaning kitchen counters and kitchen sinks before she left for the day. Ms. Tyler had left her shift without attending to those items. On the morning of September 20, a third-shift resident shift had notified Ms. Mulnix that Ms. Tyler had left dirty glasses and dirty placemats on dining room tables at the time she left for the day on September 19, 2019. Ms. Tyler asserts

she does not recall the events of either day. Prior to discharging Ms. Tyler from the employment on September 23, the employer had reviewed both matters with Ms. Tyler. Ms. Tyler signed the written reprimand without adding comments in the space provided for employee comments.

The employer considered several prior concerns and reprimands when making the decision to discharge Ms. Tyler from the employment.

On September 4, 2019, Ms. Mulnix had issued a Counseling Documentation Form to Ms. Tyler as a "Final Warning." On the Counseling Documentation Form, Ms. Mulnix outlined her concerns as follows:

7-26, Mary was sitting in diningroom [sic] with her daughter[.] Kaylene asked her shouldn[']t you be in the kitchen working[?] Mary got up went into Livingroom sat down[.] Kaylene once again reminded her she needed to be in [the] kitchen doing work. then proceeded to walk down hallway.

8-15 Mary was cutting watermelon without gloves on. I have told her numerous times you need to wear your gloves.

8-31 Mary left work at 6:15 and left with dirty dishes on the tables. She was scheduled till [sic] 7:00[.]

8-3 I have gone into work early and Mary had worked the night before. all the counter tops in kitchen were dirty with dried on Food.

8-29 no dating snacks in fridge in diningroom [sic]. I told her she needed to date, and she still didn[']t do it.

On July 26, Ms. Hoskins had observed Ms. Tyler loafing in the dining room at a time when Ms. Tyler was supposed to be performing work. Ms. Tyler was sitting in the dining room visiting with her daughter. After Ms. Hoskins suggested there was work to do, Ms. Tyler moved to a different area and continued to loaf. Ms. Hoskins observed that Ms. Tyler spent more than 30 minutes engaged in non-work related activities. On August 15, Ms. Tyler had elected not to wear gloves when cutting watermelon, though she was aware that safe food handling regulations required that she wear gloves when handling food. On August 31, Ms. Tyler had elected to leave work early without permission while the dining room was still in use, thereby leaving portions of the dining room uncleaned at the time she left. Ms. Tyler asserts that she did not work on August 2 and therefore was not responsible for the dirty kitchen counters that Ms. Mulnix found on the morning of August 3. Regarding the undated prepackaged snacks, Ms. Tyler did not think the snacks needed to be dated in light of the pre-printed expiration date on the items, but subsequently complied with Ms. Mulnix's directive to add a date to the items.

On the Counseling Documentation Form issued on September 4, 2019, Ms. Mulnix set forth the "GOALS/CORRECTIVE ACTION" as follows:

Mary will only take 2-15 min Breaks in an 8hr shift and 1-15 Break in a 6 hr shift[.]

Mary will always be wearing gloves when preparing Food[.]

She will stay until her shift is over and make sure all cleaning is done.

Mary will always date Foods[.]

no Breaks in the Diningroom [sic, only to be taken in private diningroom [sic] or activities room as long as they aren't being used.

Ms. Tyler signed the September 4, 2019 disciplinary document without adding comments in the space provided for employee comments.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)(a) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 Iowa Administrative Code rule 871-24.32(4).

Continued failure to follow reasonable instructions constitutes misconduct. See *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985).

The weight of the evidence in the record establishes a discharge that was based on misconduct in connection with the employment. The weight of the evidence establishes that Ms. Tyler was responsible for leaving the dirty glasses and dirty placemats on the tables on September 19 and 20. The weight of the evidence establishes that Ms. Tyler was also responsible for leaving the kitchen counters dirty and leaving food in the kitchen sinks on September 20. These concerns regarding negligent performance of work duties followed prior similar incidents and other incidents where Ms. Tyler elected not to perform her work duties in a satisfactory manner despite possessing the ability to perform satisfactory work. The employer reasonably expected Ms. Tyler to perform her assigned duties. Ms. Tyler's pattern of conduct was sufficient to demonstrate an intentional and substantial disregard of the employer's interests. Ms. Tyler is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. Ms. Tyler must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The November 26, 2019, reference 02, decision is affirmed. The claimant was discharged on September 23, 2019 for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn