

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOYCE E MOORE

Claimant

APPEAL NO. 14A-UI-06406-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IMAGINATION CREATIONS INC

Employer

OC: 05/25/14

Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 11, 2014, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged, based on an Agency conclusion that the claimant had been discharged for no disqualifying reason. After due notice was issued, a hearing was held on July 17, 2014. Claimant Joyce Moore participated and presented additional testimony through Marlin Theye. Wendy Wolver represented the employer and presented testimony through Maisi Watts. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received the Employer's Exhibits A through O into evidence. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview.

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: Joyce Moore was employed by Imagination Creations, Inc., dba Slumberland Furniture, in Oskaloosa as a full-time sales associate from 2011 until May 16, 2014 when Steven Walters, President and owner, discharged her from the employment. Laura Hoyt, Sales Manager, was Ms. Moore's primary supervisor, but others in the workplace also exercised authority over Ms. Moore's work. These included Maisi Watts, Operations Manager. Ms. Moore was consistently one of the employer's better performers in terms of sales revenue generated. The employer sometimes found Ms. Moore difficult to deal with.

The final incident that triggered the discharge occurred on May 7, 2014. On that day a customer that Ms. Moore had been serving, in connection with a furniture order, was upset that some of his order would arrive later than expected. Ms. Moore told the customer that the error in the delivery date was attributable to the Slumberland Corporation. At that time, Ms. Moore believed the delivery delay was attributable to the Slumberland Corporation. However, the

confusion over the delivery date was actually attributable to Ms. Moore having given the customer bad information regarding when the customer's bed would arrive. The bed was due to arrive on May 15, but Ms. Moore had told the customer the bed would arrive on May 9. The correct delivery date was available to Ms. Moore via the employer's sale order report (SOR) software program. The employer had implement use of the new SOR system in early 2014. Ms. Moore had not watched the webinar and, for that reason, had not fully completed training in use of the software. The customer asked for the corporate telephone number. Ms. Moore complied with the customer's request and obtained the corporate telephone number from Maisi Watts, Operations Manager. Ms. Moore provided the customer with a loaner bed until the customer's bed arrived. Ms. Watts and coowner Jackie Walters heard a portion of the conversation, but did not intervene to try to address the customer's concerns. The customer used the contact number to complain to the Slumberland Corporation. A corporate franchise advisor subsequently contacted the Oskaloosa store to point out that the error, regarding the delivery date, had in fact originated with the salesperson, Ms. Moore. On May 8, 2014 Ms. Watts issued a written reprimand to Ms. Moore for assigning blame to the corporation for her error and directed Ms. Moore to set delivery dates correctly. The reprimand indicated that further failure to set delivery dates correctly would result in loss of sales commission. Ms. Moore refused to sign the reprimand.

Nothing else occurred in connection with the May 7 matter until May 16, 2014 when Mr. Walters handed Ms. Moore a termination letter and discharged her from the employment. The discharge letter contained a long list of alleged work infractions.

Prior to the May 7 incident, the employer had most recently counseled Ms. Moore in February 2014. The employer had prepared a written reprimand concerning alleged attendance and lunch break issues, but the employer elected not to issue the written reprimand to Ms. Moore.

In December 2013, the employer had issued a written reprimand to Ms. Moore and had suspended Ms. Moore for three days, in response to an absence that day. Ms. Moore was scheduled to work at 9:00 a.m. but Ms. Moore had been helping to care for her daughter's newborn, had overslept and had failed to notify the employer that she would be late or absent for that day. Later that morning Ms. Watts was able to speak with Ms. Moore and Ms. Moore advised that she was going to take the day off.

In April 2013 Ms. Watts issued a reprimand to Ms. Moore after Ms. Moore hung up on Ms. Watts during a telephone conversation. Ms. Moore had called on her day off to inquire about the availability of a bed for a customer that she had been assisting. In the course of the conversation, Ms. Watts told Ms. Moore another salesperson had already completed the transaction with the customer. Ms. Moore asked who would receive the sales commission for the sale and Ms. Watts told Ms. Moore that she would have to decide who received the sales commission. Ms. Watts alleged that Ms. Moore had not appropriately followed up with the customer that morning and Ms. Moore pointed out that she was following up at that moment. Ms. Moore told Ms. Watts that she was going to enjoy the rest of her day and abruptly terminated the call.

The employer's policies and procedures required that Ms. Moore prepare thank you notes to customers so that they may be mailed within seven days of the purchase. From January 2014 through the discharge date, with a few possible exceptions, Ms. Moore regularly failed to complete thank you notes in a timely manner.

In November 2013 Ms. Watts had taken a picture of Ms. Moore reclined and sleeping in a recliner at work. Ms. Moore had slipped off her shoes. The conduct occurred at a time when there were no customers in the store. It was not uncommon for sales staff to rest during especially slow periods when customers were sparse.

On May 7, 2014 Ms. Watts had taken a picture of Ms. Moore eating at a sales counter, rather than in the break room area. The conduct had occurred when there were no customers in the store. It was not uncommon for sales staff to eat at the sales counter when there were no customers in the store. If a customer entered the store, Ms. Moore would immediately stop eating and put her food away.

Ms. Moore established a claim for benefits that was effective May 25, 2014 and has received \$3,264.00 in benefits for the period of May 25, 2014 through July 19, 2014.

The employer participated in the fact-finding interview that led to the June 11, 2014, reference 01, decision that allowed benefits. Ms. Watts and Wendy Wolver, provided oral statements. The employer submitted documentation.

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 employer made many allegations of misconduct in the discharge letter and at the appeal hearing. The final incident that triggered the discharge did indeed involve carelessness and/or negligence on the part of Ms. Moore insofar that Ms. Moore had given the customer erroneous delivery date information based on her failure to properly utilize the SOR. The employer has presented insufficient evidence to establish that Ms. Moore intentionally shifted blame from herself to the Slumberland Corporation or that Ms. Moore told the customer that she would complain if it was her. The evidence regarding completion of the thank you notes is problematic. The employer submitted an exhibit that purports to show Ms. Moore's failure to follow through on thank you notes in a timely manner, (See Exhibit H). However, the employer expunged comparable information concerning three other salespeople. The weight of the evidence indicates that despite the employer's written policy regarding timely thank you notes, the task was a relatively low priority and the employer did not enforce its own policy. This is evidenced from the fact that Ms. Moore did not meet the requirement for months, but the employer never once reprimanded her for it. The evidence does not support the employer's assertion that Ms. Moore's decision to eat at the sales counter involved misconduct. The weight of the evidence indicates that Ms. Moore did so to better position herself to serve customers as they entered the store and that the practice was common amongst the sales staff. Despite appearances, the weight of the evidence does not support a finding of misconduct in connection with the November napping incident. The weight of the evidence indicates that it was common practice for sales staff to occasionally rest during long dry spells when there were no customers in the store. The administrative law judge notes that Ms. Moore was not reprimanded for the conduct at the time despite Ms. Watts' decision to snap a picture. The evidence indicates a single unexcused absence in December 2013, but the employer has presented insufficient evidence to establish any additional unexcused absences. The employer was unable to provide the dates or details of alleged additional absences.

The evidence concerning Ms. Moore termination of the call indicates that Ms. Watts was an equal participant in getting the call to that point and that the conversation had ended at the time Ms. Moore hung up. The employer has presented insufficient evidence to prove misconduct in connection with other allegations of misconduct in connection with the employment.

While the weight of the evidence indicates that Ms. Moore was not an ideal employee, the weight of the evidence fails to establish misconduct in connection with the employment that rises to the level of misconduct necessary to disqualify Ms. Moore for unemployment insurance benefits. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Moore was discharged for no disqualifying reason. Accordingly, Ms. Moore is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The Claims Deputy's June 11, 2014, reference 01, decision is affirmed. 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

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