

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOYLENE S BEADLESTON

Claimant

APPEAL NO. 15A-UI-11419-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACCESS 2 INDEPENDENCE OF THE EAST

Employer

OC: 09/20/15

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 October 9, 2015, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant had been discharged on September 4, 2015 for no disqualifying reason. After due notice was issued, a hearing was held on October 28, 2015. Claimant Joylene Beadleston participated. Denette Cardwell represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits One, B, D and E into evidence.

ISSUES:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Access 2 Independence of the East is a small agency that provides community based support to persons with disabilities. Joylene Beadleston worked as a consumer empowerment worker and receptionist from November 2014 until September 4, 2015, when Denette Cardwell, Interim Executive Director, discharged her from the employment. Ms. Cardwell had joined the employer in July 2015 and became Ms. Beadleston's supervisor at that time. Ms. Cardwell discharged Ms. Beadleston in response to a September 1, 2015 emailed complaint from another staff member, Kelly Schneider, Independent Living Specialist. In the complaint, Ms. Schneider made a number of allegations concerned Mr. Beadleston's alleged failure to properly prepare for a group art activity that occurred on September 1. Ms. Schneider made additional allegations in the email concerning Ms. Beadleston's conduct during the activity. Ms. Beadleston's role in connection with the art activity was to function as an assistant to Ms. Schneider. Ms. Beadleston had posted appropriate and timely notice of the art activity. Ms. Beadleston was dependent upon Ms. Schneider for the supplies list for the activity and Ms. Schneider had

not given Ms. Beadleston much time to secure supplies. The activity had to be modified at the last minute due to unforeseen circumstances. Ms. Beadleston had not engaged in any inappropriate actions during the activity.

In making the decision to discharge Ms. Beadleston, the employer considered prior concerns. Ms. Beadleston had erroneously reported that a particular male coworker had been viewing pornography on a work computer. Ms. Beadleston had encountered the pornography messages when she attempted to use the computer and had erroneously concluded that the particular male employee was responsible for the images being on the computer. Ms. Beadleston had made a comment about the need to properly vet any prospective employee, which the employer interpreted as a gender-biased statement encouraging discrimination against male applicants. The employer was concerned about Ms. Beadleston's time management skills. The employer was concerned that Ms. Beadleston had had a personal cell phone delivered to the workplace. These several concerns prompted the employer to place Ms. Beadleston on a performance improvement plan on August 15, 2015.

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.

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 presented insufficient evidence, and insufficiently direct and satisfactory evidence, to provide misconduct in connection with the final incident that triggered the discharge. The employer's knowledge of the final incident that triggered the discharge was limited to the allegations contained in Ms. Schneider's September 1, 2015 email. The employer elected not to present testimony from Ms. Schneider. Ms. Beadleston testified that she had properly prepared for the art activity, properly followed through and did not engage in any inappropriate actions or discussion in connection with the activity. The employer had the burden of proving misconduct, but failed to present sufficient evidence to rebut Ms. Beadleston's assertions. The employer's additional concerns predate the August 15, 2015 performance improvement plan and, therefore, do not involve allegations of current acts of misconduct. In the absence of proof of a current act of misconduct, the evidence establishes a discharge for no disqualifying reason. Accordingly, Ms. Beadleston is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The October 9, 2015, 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

jet/css