

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHERRYLL R NORTON

Claimant

APPEAL NO. 12A-UI-03307-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ANDERSON TOOLING INC

Employer

OC: 02/05/12

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Anderson Tooling Inc. filed a timely appeal from a representative's decision dated March 21, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on April 17, 2012. Claimant participated. The employer participated by Ms. Carroll Anderson, Vice President/Owner and Mr. Ron Learn, Shop Supervisor. Dean Anderson and Fredrick Swartz were not available to testify.

ISSUE:

At issue is whether the evidence in the record establishes intentional misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Sherryll Norton was employed by Anderson Tooling Inc. from November 10, 2010 until February 2, 2012 when she was discharged from employment. Ms. Norton held the position of full-time accountant and was paid by the hour. Her immediate supervisors were Carroll Anderson and Dean Anderson.

A decision was made to terminate Ms. Norton from her employment with the company when the employer believed that Ms. Norton had been providing information and assistance to Jeff Anderson a part owner who had been discharged from employment October 21, 2011.

The company believed that Ms. Norton had supplied financial information to Jeff Anderson after his discharge because information of that nature was found in a "shred box" located in the claimant's work area. Other individuals had access to the shred box in addition to Ms. Norton. The employer had also believed that Ms. Norton had allowed Jeff Anderson to enter company premises on or about November 9, 2011. Mr. Anderson at that time had entered the premises on his own to obtain some personal property. The claimant as well as other office workers was present at the time.

An additional for discharging the claimant was based upon the employer's dissatisfaction with Ms. Norton's reluctance to change an accounting entry that had previously been made at the direction of the company management. The claimant believed that later altering the entry after Jeff Anderson's departure was inappropriate as the claimant did not believe that it was an accepted accounting practice. The claimant had requested that the company's CPA review the matter and instruct Ms. Norton to do so. A further reason for the employer's decision to terminate the claimant was related to Ms. Norton's failure to invoice a client for services. The claimant had neglected to send out the required invoicing due to inadvertence.

The claimant denies any intentional wrongdoing and believes that her discharge from employment was because the claimant continued to maintain a social friendship with Jeff Anderson and another family member.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is not.

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 insurance benefits. The issue is not whether the employer made a correct decision in separating the claimant but

whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). What constitutes conduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. While past acts and warnings can be used to determine the magnitude of a current act of misconduct a discharge for misconduct cannot be based upon such acts. The termination of employment must be based upon a current act. See 871 IAC 24.32(8).

Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. If the employer fails to furnish available evidence to corroborate the allegation misconduct cannot be established. See 871 IAC 24.32(4).

In this matter the evidence in the record establishes that the claimant was discharged based upon the employer's belief that Ms. Norton continued to maintain a friendship with a discharged family member of Anderson Tooling Inc. and that the claimant may have been acting to display information or to assist that individual. A number of employer dissatisfactions were for instances that occurred substantially before the date of discharge and were not current acts of misconduct. The invoicing issue occurred approximately one month before the claimant's discharge and the incident where Jeff Anderson was on company premises took place on November 9, 2011. The issue of the claimant's accounting entry had not been fully resolved at the time of the claimant's discharge. Ms. Norton continued to wait for a statement from the company's CPA to verify that the change mandated by the employer was an appropriate accounting practice.

The incident that precipitated Ms. Norton's discharge took place when Ms. Anderson discovered a document with confidential information in a "scrap box" located in the claimant's general work area. The claimant has specifically denied providing confidential information to Jeff Anderson. The evidence in the record establishes that a number of employees had access to the shred or scrap box. The employer however chose to attribute the document to Ms. Norton although there was nothing else except the claimant's friendship with the discharged employee to corroborate that the claimant had been involved in supplying confidential information. The employer made a business decision to terminate Ms. Norton believing that it was for the good of the company.

The question before the administrative law judge is not whether the employer has a right to discharge Ms. Norton for these reasons but whether the discharge is disqualifying under the provision of the Employment Security Law. While the decision to terminate Ms. Norton may have been a sound decision from a management viewpoint the evidence in the record does not establish sufficient evidence of a current act of misconduct for a disqualification for unemployment insurance benefits. Benefits are allowed providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated March 21, 2012, reference 01, is affirmed. The claimant as discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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