

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

TERISE A WINKELPLECK

Claimant

APPEAL NO. 18A-UI-04789-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 03/25/18

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Terise Winkelpleck filed a timely appeal from the April 19, 2018, reference 03, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on the Benefits Bureau deputy's conclusion that Ms. Winkelpleck was discharged for dishonesty in connection with the employment. After due notice was issued, a hearing was held on May 10, 2018. Ms. Winkelpleck participated. Robin Van Deest represented the employer. Exhibits 2 through 5, 9 and 10 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: Terise Winkelpleck was employed by Casey's Marketing Company as a full-time Food Service Leader/Kitchen Manager until February 21, 2018, when Robin Van Deest, Store Manager, discharged her from the employment for theft of company property. Ms. Winkelpleck started with Casey's in 2012. At the start of the employment, the employer had Ms. Winkelpleck sign to acknowledge the company policy that prohibited employees from removing company property without management authorization. The policy statement also stated that Casey's expected Ms. Winkelpleck to act with honesty and integrity. At the start of the employment, the employer had Ms. Winkelpleck sign to acknowledge her obligation to read and understand the employee handbook. The employer kept two copies of the handbook at the store and the handbook was readily available to Ms. Winkelpleck. In February 2012, the employer revised its policy regarding honesty and integrity and the revised policy became part of the employee handbook. The policy emphasized honesty and trustworthiness and prohibited stealing. In February 2014, Ms. Winkelpleck was promoted to the Food Service Leader/Kitchen Manager position. From that time to the end of the employment, Ms. Winkelpleck supervised several employees and was responsible for enforcing Casey's policies.

The sole incident that factored in the discharge occurred on February 18, 2018. On that day, Ms. Winkpleck misappropriated four Pizza-to-Pump gas discount coupons. The coupons were part of a customer incentive program that ran from January through March 2018. For each large pizza a customer purchased during that period, the customer would receive a coupon good for a 10-cent per gallon discount on gasoline purchased at Casey's. After Ms. Winkpleck pocketed the gas discount coupons, she redeemed them the same day to obtain a discount on a gasoline purchase. The value of the unauthorized discount was slightly less than \$5.00. Ms. Winkpleck knew at all relevant times that her conduct violated Casey's policy. Ms. Winkpleck's conduct came to the attention of Ms. Van Deest when another employee reported it. Ms. Van Deest reviewed store surveillance video and observed Ms. Winkpleck place Pizza-to-Pump coupons in her smock pocket and then transfer them to her pocket book. Ms. Van Deest also observed Ms. Winkpleck redeeming the coupons. Ms. Van Deest conferred with her supervisor, Area Supervisor Wendy Schleisman. On February 21, 2018, Ms. Van Deest notified Ms. Winkpleck that she was aware of the conduct and that Ms. Winkpleck was being discharged for the conduct.

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 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 on February 21, 2018 that was for misconduct in connection with the employment. Iowa Code Section 714.1 defines the criminal offense of theft, in relevant part, as follows:

Theft defined. A person commits theft when the person does any of the following:

1. Takes possession or control of the property of another, or property in the possession of another, with the intent to deprive the other thereof.
2. Misappropriates property which the person has in trust, or property of another which the person has in the person's possession or control, whether such possession or control is lawful or unlawful, by using or disposing of it in a manner which is inconsistent with or a denial of the trust or of the owner's rights in such property, or conceals found property, or appropriates such property to the person's own use, when the owner of such property is known to the person.

Ms. Winkelpleck committed theft from her employer when she converted the Pizza-to-Pump coupons to her own use, inconsistent with Casey's ownership rights. Ms. Winkelpleck did not receive the four coupons in question through purchase of pizzas and therefore had no right or authority to redeem them for a gas discount. By taking and using the coupon's Ms. Winkelpleck not only committed theft from the employer, but also perpetrated a fraud upon the employer. Ms. Winkelpleck knew at all relevant times that she had no right or authority to convert the coupons to personal use and that her conduct was contrary to the interests of the employer. Ms. Winkelpleck's dishonest conduct fundamentally undermined the essential trust relationship between her and the employer. Ms. Winkelpleck's conduct indicated an intentional and substantial disregard of the employer's interests.

Because the evidence in the record establishes a discharge for misconduct in connection with the employment, Ms. Winkelpleck is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. Ms. Winkelpleck must meet all other eligibility requirements. The employer's account shall not be charged.

DECISION:

The April 19, 2018, reference 03, decision is affirmed. The claimant was discharged on February 22, 2018 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 ten times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs