

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHERYL J ROACH

Claimant

APPEAL NO. 12A-UI-05426-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 04/15/12

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Cheryl Roach filed a timely appeal from the May 4, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on June 28, 2012. Ms. Roach participated. Brandy Anderson, Store Manager, represented the employer. Exhibits One through Four 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: Cheryl Roach was employed by Casey's Marketing Company as a part-time cashier/cook from 2008 until April 17, 2012, when Brandy Anderson, Store Manager, discharged her from the employment for violating the employer's written Removal of Company Property and Employee Discount/Purchase Policy. On April 16, 2012, Area Supervisor Sharon Woods was conducting an audit of employee transactions and noted that Ms. Roach had voided an employee transaction on March 23, 2012. Ms. Woods contacted Ms. Anderson and together they reviewed the surveillance video from March 23. She observed that Ms. Roach had rung up two bottled beverages, a slice of breakfast pizza, and a slice of regular pizza. Ms. Roach had used her employee discount for the pizza when she rang it up. Ms. Roach wrote a personal check to cover the purchase, but the employer's system declined it for being on the bad check list. The fact that it was on the bad check list indicated that Ms. Roach had previously written a check to Casey's without sufficient money in the account to cover the check. After her personal check was declined, Ms. Roach voided the sale from the register. Ms. Roach returned the bottled beverages to the storage room. Ms. Roach had already consumed the pizza. The void occurred at 1:40 p.m. Ms. Roach had worked until the end of her shift at 4:00 p.m. and then left work. Ms. Roach never compensated the employer for the pizza she had consumed. Ms. Roach never brought the matter to the employer's attention.

The employer has a written Removal of Company Property and Employee Discount/Purchase Policy. Ms. Roach was fully aware of the policy. On September 16, 2008, Ms. Roach signed her acknowledgement of the policy and her duty to follow it. The policy indicated, in part, as follows:

With the exception of fountain drinks mentioned above, you are required to pay for any other item you intend to consume, use, or remove from the store. This includes payment for products pulled from the food warmers, staled [sic] donuts, or damaged and outdated items. An employee who fails to properly pay for products as required by this policy, or who fails to properly handle his or her receipts, will be subject to immediate disciplinary action up to and including termination.

Please note that you are required to retain receipts for all other items you purchase while on duty, evidence if they products do not quality for an employee discount.

An earlier paragraph included the following: "You must sign your receipt and place it in the Shift Audit envelope."

Ms. Roach knew that the employer's written policy required that she pay for food first, get a receipt, and then consume it.

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.

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 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 that Ms. Roach knowingly violated the employer’s written policy regarding employee purchases and removal of company property. Ms. Roach knew it was in violation of the policy to eat the employer’s food first and pay later. Ms. Roach knew it was in violation of the policy to consume the food with a receipt. Ms. Roach knew it was in violation of the employer’s policy not to pay for the food. In light of the circumstances surrounding the incident, administrative law judge finds Ms. Roach’s testimony about forgetting to pay for the food not credible. The administrative law judge also finds not credible Ms. Roach’s assertion that the Mount Ayr Casey’s did not follow and enforce the written policy.

The evidence indicates that the incident from March 23, 2012 did not come to the employer’s attention until April 16 and that the employer promptly ended the employment the next day. The evidence establishes a current act of misconduct.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Roach was discharged for misconduct. Accordingly, Ms. Roach is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer’s account shall not be charged for benefits paid to Ms. Roach.

DECISION:

The Agency representative's May 4, 2012, reference 01, decision is affirmed. The claimant was discharged for misconduct. 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 allowance, provided she meets all other eligibility requirements. The employer's account will not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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