

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER R SCHAECHER
Claimant

APPEAL NO. 13A-UI-13257-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADCO ENTERPRISES LC
Employer

OC: 10/27/13
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 December 2, 2013, 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. After due notice was issued, a hearing was held on December 19, 2013. Claimant Jennifer Schaecher participated. Ellen Paullin 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 through 16, A through G, I, J through Q, V, and W into evidence.

The parties stipulated that the employer participated in the fact-finding interview that led to the December 2, 2013, reference 01, decision that allowed benefits.

ISSUES:

Whether Ms. Schaecher separated from the employment. She did.

Whether Ms. Schaecher separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

Whether Ms. Schaecher has been overpaid unemployment insurance benefits.

Whether the employer's account may be charged for benefits paid to this point or hereafter.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: ADCO Enterprises, L.C., owns and operates the Hotel Greenfield in Greenfield. Ellen Paullin is Manager and a co-owner. Jennifer Schaecher began her employment at the hotel in August 2011 and was promoted to full-time Assistant Manager and Head of Housekeeping in February 2012. Ms. Paullin was Ms. Schaecher's immediate supervisor. Ms. Paullin is supervised by a management board of directors.

Ms. Schaecher last performed work for the employer on October 23, 2013. On that day, Ms. Paullin issued a written reprimand to Ms. Schaecher. Ms. Paullin notified Ms. Schaecher that Ms. Schaecher was being removed from her Assistant Manager position and being placed instead on an "on-call" position. The move effectively ended the employment. The October 23, 2013 reprimand stated as follows:

Due to continued errors Hotel Greenfield has reassigned Jennifer Schaecher to the on call position. Jennifer will be contacted for hotel coverage in the case of sick personnel, big events, bartending, breakfast service, or when additional housekeeping is needed.

Jennifer was given a written warning about poor performance and negative statements on September 23, 2013. In the last 30 days her performance has not improved. Some examples of mistakes are listed below.

October 5 and 6 – Multiple mistakes in payment collection for the Fisher wedding group. Errors resulted in a shortage for the hotel, as well as free use of the Mary Wise Room.

October 9th – Deposit from credit card listed on wrong date in check book.

October 14th – Heat turned to 90 degrees in room 304 resulting in the fire department being dispatched for an emergency call.

October 16 – Wrong amount written in check book for credit card deposit.

October 17 – Let Tammy (hk staff) leave early before work was complete. Tammy was to clean filters in all guest rooms but was sent home instead.

October 18 – Texted Ellen (manager) to come in early because she wasn't feeling well. Jennifer forgot to order romance package for guests and did not effectively pass along work that had not been completed. Had a reservation in the computer twice for the same guest.

October 20th – No rooms were checked after housekeeping cleaned. Several rooms were still dirty, had guest items left behind, had fans and lights on, etc.

Jennifer may be reinstated as assistant manager if she is able to perform tasks as assigned without excessive errors. Jennifer also had the option to resign without paying back her overage payments of PTO.

Ms. Schaecher provided Ms. Paullin and the management board with a written response to the allegations contained in the October 23, 2013 reprimand. See Exhibit 12. The billing information concerning the 20 rooms reserved for the October 5-6 wedding party had been entered into the employer's computer system by another employee, Tori. Another employee told Ms. Schaecher that Ms. Paullin had given Tori the instructions for inputting the billing information. For that reason, Ms. Schaecher did not alter the way the information was entered. Ms. Schaecher did not contact Ms. Paullin to confirm that the information had been entered correctly. The way the information was entered into the computer system as a block entry led to confusion when it came to collecting for the rooms. The employer received payment for some of the rooms, but not for all of the rooms.

Ms. Schaecher had indeed entered the wrong date in the checkbook on October 9. Ms. Schaecher had indeed written the wrong amount for the employer's credit card deposit

when she entered that information in the employer's checkbook on October 16. Ms. Paullin had not mentioned these two errors to Ms. Schaecher prior to issuing the reprimand on October 23. Ms. Schaecher had not knowingly turned the thermostat in a room to 90 degrees on October 14, though someone had likely bumped the thermostat by accident. Who that someone was is unclear.

Ms. Schaecher had indeed allowed the housekeeper to leave early on October 17. Ms. Schaecher did so with the intention of working to remove mold from the HVAC units on October 18. Ms. Schaecher was not feeling well on October 18 and did not finish the mold removal work that day. On October 18, Ms. Schaecher inadvertently entered a duplicate reservation for a party. The party had not said anything to Ms. Schaecher about already having reserved a room and had not said anything that would prompt Ms. Schaecher to look for an earlier reservation. Ms. Schaecher would not ordinarily order the romance package items for guests. The employer had another staff member, who also worked at florist shop, who generally took care of such matters.

With regard to the rooms that Ms. Schaecher did not check on October 20, Ms. Schaecher had indeed not checked the rooms. Ms. Schaecher had instead relied on Ms. Paullin's usual practice of having the oncoming employee check rooms for cleanliness.

Despite the laundry list of concerns Ms. Paullin listed in the October 23 reprimand that removed Ms. Schaecher from her Assistant Manager position, the basis for that move had as much to do with matters other than work performance. After Ms. Schaecher had reported to the management board that she believed Ms. Paullin was stealing money and goods from the employer, Ms. Paullin had begun to routinely speak to Ms. Schaecher about Ms. Schaecher resigning from the employment. The hotel had ongoing financial problems. Before the reprimands started in September 2013, Ms. Paullin suggested to the management board that the Assistant Manager position be eliminated to save money. To save money, Ms. Paullin had cut Ms. Schaecher's Paid Time Off allowance by at least half. Ms. Paullin had cut employee hours across the board and had at times worked without pay. From the beginning of Ms. Schaecher's employment into mid-2013, Ms. Paullin spoke highly of Ms. Schaecher and provided positive reviews.

REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113) provides as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

The weight of the evidence indicates that the employer's October 23, 2013 act of removing Ms. Schaecher from her Assistant Manager and Head of Housekeeping position and placing her in "on-call," non-management status was a discharge from the employment. The employer's action separated Ms. Schaecher from her duties, from her status, and from her pay.

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 administrative law judge notes that the employer’s October 23, 2013 action took place in a time that the employer was experiencing financial hardship and at a time of year when reservations would not be at their strongest. The administrative law judge also notes that there was something akin to a flipped switch in September 2013, wherein Ms. Schaecher suddenly changed in the employer’s perception from the star employee she had been since hire to a constant source of problems. The weight of the evidence indicates that the change in the employer’s perception of Ms. Schaecher’s work performance had more to do with the employer’s financial straits, and the interpersonal issues between Ms. Paullin and Ms. Schaecher after Ms. Schaecher complained to the management board, than any change in Ms. Schaecher’s actual work performance. After the change, Ms. Paullin began to assign blame to Ms. Schaecher for some things about which Ms. Schaecher had limited control, such as a cluster reservation wherein Ms. Paullin had created the problem. After the change, Ms. Paullin began to find fault in conduct that she tacitly approved prior to the change, such as posting to Facebook from the employer’s computer. It is telling that the employer did not have Ms. Schaecher sign a handbook until September 2013. The weight of the evidence indicates that the employer was at that time positioning itself and Ms. Schaecher for the separation that occurred on October 23, 2013, exactly one month after Ms. Schaecher signed the handbook. The record establishes that Ms. Schaecher did make some mistakes and errors in judgment, but such were to be expected from time to time. Ms. Schaecher’s incidents of carelessness or negligence were not sufficient to establish a pattern of conduct indicating a willful or wanton disregard of the employer’s interests. The employer was not aware of Ms. Schaecher’s email snooping or other snooping at the time of the separation and, therefore, that conduct could not have been a factor in the decision to remove Ms. Schaecher from her employment.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Schaecher was discharged for no disqualifying reason. Accordingly, Ms. Schaecher is eligible for benefits, provided she is otherwise eligible. The employer’s account may be charged for benefits.

DECISION:

The Agency representative's December 2, 2013, 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/pjs