

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DEBORAH L DODD**  
Claimant

**APPEAL NO. 07A-UI-07265-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CHEROKEE COUNTY**  
Employer

**OC: 06/24/07 R: 01**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Deborah Dodd filed a timely appeal from the July 18, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 13, 2007. Ms. Dodd participated and was represented by Attorney Mark Cozine, who presented additional testimony through Attorneys John Wibe and Kristal Phillips. Attorney Steve Nadel represented the employer and presented testimony through County Auditor Bonnie Ebel and County Supervisor Ronald Wetherell. Exhibits One through Four, Seven and Eight were received into evidence. The administrative law judge took official notice of the documents the parties submitted for the fact-finding interview, except the documents marked Department Exhibits D-1 and D-2, which were determined not relevant.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Deborah Dodd was employed by Cherokee County as a full-time secretary in the County Attorney's office until May 30, 2007, when outgoing County Attorney Jamie Bowers discharged her for soliciting signatures for a special election petition in the Cherokee County Courthouse. Ms. Dodd had worked for Cherokee County for approximately two decades. Prior to May 1, 2006, Ms. Dodd had been a part-time county employee and had also been a part-time secretary in the law office of John Wibe.

During Ms. Dodd's employment, the Cherokee County Attorney's office was located outside the courthouse, in the law firm headed by John Wibe. Mr. Wibe had been the long-time Cherokee County Attorney. At the end of Ms. Dodd's employment, Mr. Wibe contracted with Cherokee County to assist the County Attorney with civil matters. Attorney Kristal Phillips was Mr. Wibe's law partner and a part-time Cherokee County Attorney responsible for Juvenile Court cases. Beginning July 1, 2006, Cherokee County paid rent to Mr. Wibe for office space used by the County Attorney's office. In mid-2006, the county commenced plans to move the County Attorney's office into the courthouse effective July 1, 2007. Throughout Ms. Dodd's employment, all of the lawyers serving the County Attorney's office were housed within Mr. Wibe's law office. The business hours of the law office, and the County Attorney's office, were 8:30 a.m. to 5:00 p.m. These hours differed from the normal

courthouse business hours, which were 8:00 a.m. to 4:30 p.m. Ms. Dodd often went to the courthouse before reporting to County Attorney's office at 8:30 a.m. During these morning courthouse visits, Ms. Dodd would generally file documents at the Clerk of Court's office and collect the County Attorney's mail. Ms. Dodd considered this time at the courthouse to be prior to the start of her actual workday.

Jamie Bowers was Cherokee County Attorney from January 2007 until June 1, 2007, the effective date of his quit. The Cherokee County Board of Supervisors appointed Jay Tiernan to serve the rest of Mr. Bower's term in office. Mr. Tiernan had been an Assistant Cherokee County Attorney prior to being appointed County Attorney. Ms. Dodd disagreed with the Board of Supervisors' decision to appoint a new County Attorney rather than hold a special election to elect a new County Attorney.

Ms. Dodd preferred another local attorney for the position of Cherokee County Attorney. On the morning of May 30, 2007, between 8:16 and 8:28 a.m., Ms. Dodd took a petition for a special election to several of the courthouse offices and solicited signatures from employees of those offices.

Cherokee County's work rules prohibited employees from publicly criticizing Cherokee County departmental operations and personnel unless the assertions made were accurate and truthful. The county's work rules expressly excluded off-duty conduct from this prohibition, provided the employees were speaking as private citizens. These work rules applied to Ms. Dodd's employment and Ms. Dodd had received a copy of the work rules.

Cherokee County did not have a policy that specifically addressed soliciting signatures on petitions and provided no training to employees concerning this issue. At the time Ms. Dodd took the special election petition around the courthouse on the morning of May 30, she did not know that Mr. Bowers or other county officials might view her actions as misconduct. Ms. Dodd had never taken another petition around the courthouse.

Late in the day on May 30, Mr. Bowers confronted Ms. Dodd about her conduct in circulating the petition. Mr. Bowers told Ms. Dodd that her actions "were the stupidest thing" she could have done and discharged her from the employment.

Though Mr. Bowers discharged Ms. Dodd ostensibly based on her circulation of the petition, one or more county officials were also concerned about Ms. Dodd continuing to perform services for the Wibe law firm at a time when she was supposed to be a full-time county employee. Ms. Dodd served as the receptionist in the law office. This included receiving calls for the County Attorney's office and the private law firm. Callers often called the private law firm's number when looking to speak with someone in the County Attorney's office. Aside from the receptionist duties, Ms. Dodd assisted Mr. Wibe with his contract work for the county and other occasional work associated with the private law practice. Most, if not all, of the non-receptionist work Ms. Dodd performed for the private law practice, she performed on her lunch break or after normal business hours. The county had been aware of Ms. Dodd's dual receptionist duties and continued employment relationship with the Wibe law firm for several months prior to the May 30, 2007 discharge and had taken no steps to reprimand Ms. Dodd.

#### **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 greater weight of the evidence indicates that Ms. Dodd's conduct in circulating the special election petition occurred outside her regular working hours. Though Ms. Dodd's performance of county work between 8:00 and 8:30 a.m. raises the question of whether this time should have been considered her normal work hours, the greater weight of the evidence indicates that Ms. Dodd did not report this time to the county for payroll purposes and the hours fell outside the established hours of the County Attorney's office. In addition, the greater weight indicates that Ms. Dodd was acting as a private citizen when she circulated the petition and was not attempting to speak for the County Attorney's office or for Cherokee County. Further still, despite Ms. Dodd's personal feelings about the Board of Supervisors' decision to forego a special election and appoint a new County

Attorney, the greater weight of the evidence fails to establish that Ms. Dodd willfully violated, or violated at all, the interests of the County Attorney's office, the Board of Supervisors, or against the interests of Cherokee County generally. It is a tough sell to argue that encouraging or facilitating voter participation in electing public officials to public office rises to the level of substantial misconduct.

The administrative law judge notes that the employer failed to present testimony from Mr. Bowers, Mr. Tiernan, or other servants of the County Attorney's office. The administrative law judge infers that such testimony would not have aided the employer's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976). The present and/or past members of the County Attorney's office who provided testimony supported Ms. Dodd's case, not the employer's. The administrative law judge notes that the employer elected to base much of its case on the testimony of the County Auditor, who generally lacked personal knowledge of the underlying facts.

The administrative law judge further concludes that the evidence in the record is insufficient to establish misconduct on the part of Ms. Dodd with regard to her work, directly or indirectly, for the law firm once she became a full-time county employee. The evidence indicates that one or more county officials was aware for months prior to the discharge that Ms. Dodd continued to provide some services to the law firm and took no steps to counsel Ms. Dodd on this. The conduct in question fails to establish a "current act" of conduct upon which a disqualification for benefits must be based. See 871 IAC 24.32(8). In addition, Ms. Dodd should not be faulted for the systemic irregularities the county invited through its office-sharing arrangements with the private law office.

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

**DECISION:**

The Agency representative's July 18, 2007, reference 01, decision is reversed. 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.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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