

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALISHA L CLAY**  
Claimant

**APPEAL NO. 12A-UI-12192-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SMITH FERTILIZER AND GRAIN COMPANY**  
Employer

**OC: 09/16/12**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Alisha Clay filed a timely appeal from the October 5, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on November 5, 2012. Ms. Clay participated personally and was represented by attorney Rick Olson. Kim Gross, human resources manager, represented the employer and presented testimony through Natasha Sadofsky, Randy Camden, and Sharon Smith. The administrative law judge took official notice of the materials submitted for and generated in connection with the fact-finding interview.

**ISSUE:**

Whether Ms. Clay 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: Alisha Clay was employed by Smith Fertilizer and Grain Company as a full-time front counter sales person from April 2012 until September 17, 2012, when Natasha Sadofsky, location manager, and Sharon Smith, business manager, discharged her for insubordination. Ms. Sadofsky joined the company and became Ms. Clay's immediate supervisor in June 2012. Ms. Clay's duties included receiving customers' animal feed orders at the employer's office. Ms. Clay was then to notify the feed mill staff that there was a feed order available for them to collect and fill. The feed mill was located about 200 yards from the sales office.

On September 6, Ms. Clay took a feed order to the mill and delivered it to a feed mill worker, Buck. Ms. Sadofsky had previously directed Ms. Clay not to go to the mill. There was no need for Ms. Clay to take feed orders to the mill, because the mill staff was already responsible for collecting the feed order from the sales office. Ninety percent of the time, the feed mill staff would need to collect the appropriate feed mix ingredients from the warehouse anyway. A trip to the office to collect the feed order was part of the mill workers' established routine. Ms. Clay was the only one amongst the three counter people who felt the need to take feed orders to the mill. The employer alleges that on September 6, Ms. Clay took the opportunity to speak to Buck about a plan to replace Randy Camden, outside operations manager, with another employee.

Once Ms. Sadofsky became aware of the alleged conversation, she again directed Ms. Clay not to go to the feed mill.

Despite the reiterated directive not to go to the feed mill, on September 7 Ms. Clay once again took it upon herself to make the 200-yard trip to the feed mill to hand-deliver the feed order. While there, Ms. Clay mentioned to Buck and to Mr. Camden that Ms. Sadofsky had jumped down her throat about going to the feed mill the previous day. Mr. Camden reported the conversation to Ms. Sadofsky. Ms. Sadofsky once again directed Ms. Clay not to go to the feed mill.

Despite the repeated directives to stay at the office and not go to the feed mill, on September 14, Ms. Clay once again hand-delivered a feed order to Buck at the feed mill. The employer alleges that, while there, Ms. Clay complained about her long work hours.

On September 17, the employer discharged Ms. Clay for repeatedly disregarding the employer's directive to stay at the sales office and not go to the feed mill.

Several days prior to the discharge, Ms. Clay had gone to Sharon Smith, business manager, with concern about the number of errors Ms. Clay felt she was making while performing her duties. During the discussion on September 17, Ms. Clay again mentioned the number of errors she had been making. The employer did not base the discharge decision on the errors Ms. Clay had been making while performing her duties.

#### **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).

Continued failure to follow reasonable instructions constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See Woods v. Iowa Department of Job Service, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See Endicott v. Iowa Department of Job Service, 367 N.W.2d 300 (Iowa Ct. App. 1985).

In Gilliam v. Atlantic Bottling Company, the Iowa Court of Appeals upheld a discharge for misconduct and disqualification for benefits where the claimant had been repeatedly instructed over the course of more than a month to perform a specific task and was part of his assigned duties. The employer reminded the claimant on several occasions to perform the task. The employee refused to perform the task on two separate occasions. On both occasions, the employer discussed with the employee a basis for his refusal. The employer waited until after the employee's second refusal, when the employee still neglected to perform the assigned task, and then discharged employee. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990).

The administrative law judge found the employer's testimony more credible than the testimony provided by Ms. Clay. Multiple witnesses with different duties testified that there was no need for Ms. Clay to take the feed orders to the mill and that Ms. Clay had been told repeatedly to forego trips to the feed mill. Mr. Camden testified that Ms. Clay used an unnecessary trip to rehash a verbal reprimand she had received from Ms. Sadofsky. Ms. Clay testified to her good relationship with Mr. Camden. The administrative law judge finds no reason to discount the testimony of Mr. Camden, which testimony supports the employer's assertion Ms. Clay was

using the unauthorized trips to the feed mill to complain about Ms. Sadofsky and otherwise cause dissension.

The employer's expectation and directive that Ms. Clay would stay at the sales office and perform her assigned duties, rather than make unnecessary trips 200 yards away to the feed mill, was reasonable. It was within the employer's discretion to decide how best and most efficiently to perform work. Ms. Clay's repeated disregard of the employer's directives not to venture to the feed mill was not reasonable. Ms. Clay had no legitimate reason for traveling to the feed mill, since the feed mill staff were responsible for collecting the feed orders and usually had to make a trip in that direction anyway to collect feed mixture materials. In light of the repeated directives and the repeated disregard of the directives, Ms. Clay's pattern of conduct demonstrated a willful disregard of the employer's interests.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Clay was discharged for misconduct. Accordingly, Ms. Clay 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. Clay.

**DECISION:**

The Agency representative's October 5, 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.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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