

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRITTANI N KINNEY
Claimant

APPEAL NO. 11A-UI-09538-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CASEY'S MARKETING COMPANY
CASEY'S GENERAL STORES**
Employer

**OC: 06/19/11
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Brittani Kinney filed a timely appeal from the July 14, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 11, 2011. Ms. Kinney participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Exhibit A was 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: Brittani Kinney was employed by Casey's as a part-time cashier/pizza maker from 2009 until June 22, 2011, when Area Supervisor Doreen Flick discharged her from the employment. On June 22, Ms. Flick and Store Manager Connie Daggett met with Ms. Kinney for the purpose of issuing a reprimand to Ms. Kinney. The reprimand was based on Ms. Kinney's absence on June 18, 2011. Prior to the missed shift, Ms. Kinney had provided the employer with proper notice that she would be absent due to illness from the shift. Ms. Kinney thought it was unjust that the employer wanted to issue a reprimand to her for the missed shift. Ms. Kinney told the employer that she wanted to speak with a corporate representative before she signed the reprimand. Ms. Flick then notified Ms. Kinney that she was discharged from the employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 § 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 employer failed to participate in the hearing and, thereby, failed to present any evidence to establish that Ms. Kinney was discharged for misconduct in connection with the employment. The evidence established that the employer took steps to reprimand Ms. Kinney in connection with any absence. In the absence of evidence from the employer, there is insufficient evidence to establish that the employer's conduct was reasonable or that Ms. Kinney's refusal to sign the

reprimand was unreasonable. There is sufficient evidence in the record to establish that the absence upon which the reprimand was based was an absence due to illness and was properly reported to the employer. That would make the absence an excused absence under the applicable law.

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

DECISION:

The Agency representative's July 14, 2011, 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs