

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

LAURIE J SCHADE
Claimant

APPEAL NO. 18A-UI-11112-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DIVERSIFIED SERVICES FOR INDUSTRY
Employer

OC: 10/21/18
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Laurie Schade filed an appeal from the November 9, 2018, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the Benefits Bureau deputy's conclusion that Ms. Schade was discharged on October 19, 2018 for conduct not in the best interest of the employer. After due notice was issued, a hearing was held on November 29, 2018. Ms. Schade participated. Stuart Larimer of U.C. Advantage, Inc. represented the employer and presented testimony through Denise McDonald. Exhibits 1 through 4 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: Diversified Services for Industry provided cleaning and hospitality services to customer businesses. Laurie Schade was employed by Diversified as a full-time "day porter" from 2016 until October 19, 2018, when Denise McDonald, District Manager, discharged her from the employment. Throughout the employment, Ms. Schade was assigned to the Allsteel headquarters in Muscatine. Ms. Schade's duties included cleaning restrooms, setting up conference/presentation rooms, manning a coffee station during events, as well as tear down and cleaning up the venue following the event. Mari Rada, Area Operations Manager, was Ms. Schade's immediate supervisor during the last year of the employment. Ms. Rada is responsible for multiple locations and would only intermittently be present at the Allsteel location. Ms. Rada reports to Ms. McDonald. Prior to Ms. Rada's tenure, Ms. McDonald functioned as Ms. Schade's immediate supervisor. Diversified's primary contact at the Allsteel facility was Gina Gore, Facility Coordinator. Ms. Schade regularly interacted with Ms. Gore. However, Ms. Schade would primarily interact with and Allsteel leadership personnel when preparing for and performing work in connection with meetings and social events. There was a measure of ongoing interpersonal conflict between Ms. Gore and Ms. Schade. There was no such friction between Ms. Schade and Allsteel leadership. Ms. Schade had good working

relationship with Allsteel's President, Brandon Sieben, who made clear that he appreciated Ms. Schade's attention to customer service and who occasionally took time to initiate casual conversation with Ms. Schade.

The final incident that triggered Ms. McDonald's decision to discharge Ms. Schade from the employment was Ms. Gore's complaint to Ms. McDonald on October 17, 2018 in which Ms. Gore asserted that Ms. Schade had overstepped her bounds during an Allsteel-hosted event that day. Ms. Schade had been assisting with the event and had been on her way to refresh the restrooms when an event participant asked her whether she knew the identity of the photographer who had taken the photos that adorned the walls. With the intent to be helpful, Ms. Schade said she did not know the identity of the photographer, but knew someone at Allsteel who would know. Ms. Schade contacted the appropriate person at Allsteel, learned the identity of the photographer, and then returned to share that information with event participant. By that time, the participant had moved on to another area of the Allsteel facility. The event coordinators were not readily available, so Ms. Schade contacted Mr. Sieben to enlist his assistance in passing along the information. Mr. Sieben communicated the information to the event coordinators who shared the information with the event participant. Ms. Gore faulted Ms. Schade for contacting Mr. Sieben regarding the relatively insignificant matter, rather than contacting Ms. Gore or Ms. Rada and rather than sticking to her essential duties related to the social event. After Ms. Gore made initial contact with Ms. McDonald to indicate she had a complaint to share about Ms. Schade, Ms. McDonald contacted Ms. Schade. Ms. Schade explained the circumstances of the day. Ms. McDonald instructed Ms. Schade not to return to Allsteel.

On October 18, Ms. Gore met with Ms. McDonald to elaborate on her complaint and to reference other complaints she had about Ms. Schade. Ms. Gore alleged that Ms. Schade had rolled her eyes at some point during an unspecified discussion. In connection with the October 18 meeting, Ms. McDonald drew the erroneous conclusion that Ms. Schade had knowingly and intentionally lied to Ms. Gore during the week of October 8-12 by asserting that Ms. Rada and Ms. McDonald had not been present at Allsteel that week. At the start of the start of that week, Ms. McDonald went to the Allsteel facility and spoke with Ms. Schade. Ms. McDonald told Ms. Schade that she and Ms. Rada had a new account they were busy with, that they would not be available that week, and to not contact them unless it was about something important. Later that week, Ms. Gore spoke with Ms. Schade and made reference to Ms. McDonald and Ms. Rada not being present at Allsteel. Ms. Schade told Ms. Gore that the supervisors had not been at Allsteel that week. At the time of the conversation, Ms. Schade either did not recall or did not factor the Monday morning conversation with Ms. McDonald.

In making the decision to discharge Ms. Schade from the employment, Ms. McDonald considered prior concerns. On October 9, 2018, Ms. McDonald spoke to Ms. Schade regarding an Allsteel event wherein Allsteel would be hosting a VIP. As it turned out, the VIP was Governor Kim Reynolds. Ms. McDonald directed Ms. Schade to wear nice slacks for the event. Ms. Schade's work uniform usually consisted of a shirt provided by the employer and jeans or slacks provided by Ms. Schade. After Ms. McDonald spoke to Ms. Schade, Ms. Schade determined that her slacks did not fit. Ms. Schade asked her supervisor, Ms. Rada, for permission to wearing jeans to the event and Ms. Rada gave permission. Ms. Schade wore dark navy jeans to the event. In October 2017, Ms. McDonald issued a written reprimand to Ms. Schade for allegedly speaking too much to Allsteel employees. In March 2018, Ms. McDonald issued a written reprimand to Ms. Schade in response to a complaint from Ms. Gore. Ms. Gore had directed Ms. Schade to clean up trash in the area of an outside dumpster. Such duties were included in Ms. Schade's responsibilities. Ms. Schade contacted Ms. Rada to see whether the task might be performed another day when the area was drier.

Ms. Rada contacted Ms. Schade after speaking with Ms. Gore and told Ms. Schade that Ms. Gore insisted the task be performed that day. Ms. Schade went to the dumpster area, determined it was too muddy, and concluded that the assigned task might ruin her shoes. Ms. Schade went to Ms. Gore with her muddy shoes and asked whether the task might be done a different day. Ms. Gore alleged that Ms. Schade was loud and confrontational. Ms. McDonald reported to Allsteel, went to the area of the dumpster, saw that some of the area was muddy and concluded that other portions of the area were sufficiently dry to perform the task. The employer subsequently purchased rubber boots for Ms. Schade to use to perform the outside work.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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).

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).

The weight of the evidence in the record fails to establish misconduct in connection with the employment that would disqualify Ms. Schade for unemployment insurance benefits. The final incident that triggered the discharge, going to the Allsteel President regarding the request for information about the wall photographs, involved at worst a good faith error in judgment. The employer concedes that Ms. Schade was motivated by an intention to be helpful. The evidence fails to establish insubordination, intentional violation of a work rule, or other misconduct in connection with that incident. The employer presented insufficient evidence to prove that Ms. Schade had rolled her eyes at Allsteel personnel. Regarding that allegation and some others, the employer's allegation lacked substantiating proof. The employer elected not to present testimony from Ms. Gore and announced that it was electing to withhold evidence. The employer presented insufficient evidence to prove that Ms. Schade knowingly and intentionally lied to Ms. Gore regarding Ms. Rada's and Ms. McDonald's absence from the Allsteel facility during the week of October 7 through 12. Regarding the October 9 discussion about attire for the VIP visit, Ms. McDonald issued a reasonable directive to wear nice slacks, but Ms. Schade had a reasonable basis for not complying, based on her lack of such attire and permission from Ms. Rada to wear nicer jeans. Ms. Schade served several masters, including Ms. Gore, whose complaints, including the final set, suggest bias against Ms. Schade, rather than even-handedness.

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

DECISION:

The November 9, 2018, reference 01, decision is reversed. The claimant was discharged on October 19, 2018 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/rvs