

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER L JANSEN
Claimant

APPEAL NO. 12A-UI-12812-JT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXIDE TECHNOLOGIES
Employer

OC: 09/23/12
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Jennifer Jansen filed a timely appeal from the October 17, 2012, reference 02, decision that denied benefits. After due notice was issued, an in-person hearing was held in Dubuque on February 28, 2013. Ms. Jansen participated and presented additional testimony through Carolyn Meyers. The employer did not appear for hearing. Exhibits One through Eight and A through Z were received into evidence.

The employer had requested postponement of the in-person hearing, but failed to provide good cause to postpone the hearing. In addition, the administrative law judge weighed the employer's request for postponement against the prejudice to the claimant if the hearing was delayed months longer and denied the employer's request for postponement.

ISSUE:

Whether Ms. Jansen was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits. The administrative law judge concludes Ms. Jansen was discharged for no disqualifying reason.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jennifer Jansen was employed by Exide Technologies as a full-time Quality Auditor from October 2011 until September 21, 2012, when the employer discharged her for alleged failure to perform quality auditing tests and falsification of quality audit documentation to indicate that she had performed tests she had not actually performed. The measurements in question were tasks newly assigned to Ms. Jansen during another employee's absence. The timing of Ms. Jansen's discharge corresponded with the other employee's return to work. Ms. Jansen had indeed performed all the tasks assigned to her and had appropriately documented the results of the quality auditing measurements she had taken. At the time the employer accused Ms. Jansen of failing to properly perform the auditing tests and generating false documentation, Ms. Jansen asked the employer to redo the tests and compare the employer's results to Ms. Jansen's results to see that she was indeed performing the tasks and documenting them appropriately. The employer instead gave Ms. Jansen a weekend to prove that the employer's allegations

were false, but at the same time the employer barred her from the workplace so that she had no means to further challenge the employer's allegations.

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 employer failed to appear for the hearing and thereby failed to present any evidence to support the allegation that Ms. Jansen was discharged for misconduct in connection with the employment. The evidence in the record fails to establish misconduct. The evidence in the record indicates that Ms. Jansen performed the duties assigned to her in good faith and to the best of her ability.

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

DECISION:

The Agency representative's October 17, 2012, reference 02, 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

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