

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA R OTT
Claimant

APPEAL NO. 17A-UI-07599-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHESTERMAN CO
Employer

OC: 07/02/17
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Jessica Ott filed a timely appeal from the July 25, 2017, reference 01, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on the claims deputy's conclusion that Ms. Ott was discharged on July 5, 2017 for misconduct in connection with the employment. After due notice was issued, a hearing was held on August 14, 2017. Ms. Ott participated. Jenny Conolly represented the employer and presented additional testimony through Jacki Sweisberger and Steven Uhl. Exhibits 1 through 7 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: Jessica Ott was employed by Chesterman Company as a full-time payroll assistant from June 2016 until July 5, 2017, when Jacki Sweisberger, Payroll Manager, discharged her from the employment based solely on an alleged June 30 violation of the employer's confidentiality policy. Ms. Sweisberger was Ms. Ott's immediate supervisor. Ms. Ott had authority to access employee attendance files for the limited purpose of fulfilling her payroll processing duties.

At the start of the employment, the employer had Ms. Ott sign a Letter of Confidentiality that stated as follows: "This is to certify that I have access to payroll and employee personal information and that this information is of a confidential nature and will not be discussed openly with others."

On July 5, 2017, Heather Cooke, Accounts Receivable Clerk, complained in writing and orally to Ms. Sweisberger and Jenny Conolly, Human Resources Manager, that Ms. Ott had on June 30, 2017, spoken to other employees about Ms. Cooke's attendance history. Ms. Cooke complained that this was a breach of confidentiality. Ms. Cooke told Ms. Sweisberger and

Ms. Conolly that Kaylee Angerman, Staff Accountant, had told Ms. Cooke on July 3 about the June 30 conversation. Ms. Angerman and Ms. Ott shared an office.

After receiving Ms. Cooke's complaint, Ms. Connolly spoke with Kaylee Angerman. Ms. Angerman told Ms. Conolly that Ms. Ott had come to her to complain that Ms. Ott was the only person who got in trouble for missing work. Ms. Angerman told Ms. Conolly that Ms. Ott had pulled Ms. Cooke's attendance file and had stated to Ms. Angerman that Ms. Cooke had missed up to three weeks of work. Ms. Angerman told Ms. Connolly that Kassandra Hagestrom had also been present for the conversation. Ms. Angerman provided Ms. Conolly with a written statement.

After Ms. Conolly spoke with Ms. Angerman, she spoke with Kassandra Hagestrom. Ms. Hagestrom told Ms. Conolly that Ms. Hagestrom had been speaking with Ms. Angerman, when Ms. Ott approached and began to talk about the amount of time Heather Cooke has missed from work. Ms. Hagestrom told Ms. Conolly that Ms. Ott stated she was tired of being punished for attendance when no one else is. Ms. Ott had received a two-day suspension on June 13, 2017 for attendance. Ms. Hagestrom provided Ms. Conolly with a written statement.

After Ms. Conolly spoke with Ms. Hagestrom, she conferred with Ms. Sweisberger and Steven Uhl, Chief Financial Officer and the trio decided to discharge Ms. Ott from the employment. On July 5, they met with Ms. Ott for the purpose of discharging her from the employment. They told Ms. Ott that that she had breached confidentiality and that she would have no business accessing Ms. Cooke's file for review of Ms. Cooke's attendance record. They did not share with Ms. Ott any of the three written statements they had received. During the meeting, Ms. Sweisberger perceived that Ms. Ott was confused by the conversation and the allegation against her. Ms. Sweisberger tried to explain to Ms. Ott the allegation that Ms. Ott had spoken to Ms. Angerman and Ms. Hagestrom regarding Ms. Cooke's attendance. Ms. Ott stated repeatedly that she had not done or said anything about Ms. Cooke's attendance. Ms. Ott referenced that she had only spoken to Ms. Cooke's supervisor on July 3 about Ms. Cooke regarding Ms. Cooke having a missed time punch on June 30 in the course of performing her payroll duties. Ms. Ott begged for the opportunity to provide a written statement. The employer did not provide Ms. Ott that opportunity and instead told her the investigation was complete and that she was discharged from the employment.

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). 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 present sufficient evidence, and sufficiently direct and satisfactory evidence, to meet the employer's burden of proving misconduct in connection with the employment. The employer has the ability to present testimony through Ms. Angerman and Ms. Hagestrom, but elected not to provide such testimony. Ms. Ott denied at the time of the discharge, and continues to deny, that she engaged in the alleged June 30 conversation. Rather than perform a fair and balanced investigation of the matter, the employer spoke only to the complainant and the two accusers prior to making its decision to discharge Ms. Ott from the employment. The employer collected unsworn written statements from the accusers, but denied Ms. Ott a similar opportunity to provide a written statement. The weight of the evidence in the record fails to establish that Ms. Ott breached confidentiality on June 30 or that she otherwise acted with intentional and substantial 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. Ott was discharged for no disqualifying reason. Accordingly, Ms. Ott is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The July 25, 2017, reference 01, decision is reversed. The claimant was discharged on July 5, 2017 for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs