

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMANDA A JEWETT**  
Claimant

**APPEAL NO. 08A-UI-00480-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALS CORNER OIL CO**  
Employer

**OC: 12/16/07 R: 02  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Amanda Jewett filed a timely appeal from the January 9, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on January 30, 2008. Ms. Jewett participated. Danee Snyder, Auditor, represented the employer. Exhibits A through D 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: Amanda Jewett was employed by Al's Corner Oil Company as a part-time clerk from September 23, 2006 until December 18, 2007, when Operations Manager Kelly Smidt discharged her for selling tobacco to a person under the legal age. On December 13, Ms. Jewett was working at the time law enforcement conducted a tobacco sales sting. A sixteen-year-old patron presented an I.D. on which the birth year information was "smudged." Despite the fact that Ms. Jewett could not make out the birth year information on the I.D., she sold tobacco to the patron. In doing so, Ms. Jewett violated the employer's established policy, which required her to obtain proper identification and to use the available identi-scanner to confirm the age of the patron. The policy specifically directed Ms. Jewett to not sell tobacco products to the patron if there was any doubt about the patron's age. Ms. Jewett was aware of the policy at the time she intentionally failed to follow it and had signed her acknowledgment of the policy on September 25, 2006. Ms. Jewett contacted her immediate supervisor after she was confronted by law enforcement and cited for selling tobacco to an underage individual. Ms. Jewett understood at the time that her conduct would most likely lead to her being discharged from the employment. The employer discharged Ms. Jewett when she appeared for her next scheduled shift on December 18, 2007.

## 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 greater weight of the evidence in the record establishes that Ms. Jewett was discharged for knowingly violating the employer's tobacco sales policy and for violating state law regarding tobacco sales to minors. Ms. Jewett was aware of the proper policy to prevent tobacco sales to minors and failed to follow it. Ms. Jewett's conduct resulted in her being cited by law enforcement and the employer incurring a civil penalty. Ms. Jewett's conduct was in wanton violation of the employer's interests. The evidence indicates that Ms. Jewett was aware at the time she was cited that the violation of the employer's policy would prompt her termination. The employer's decision to discharge Ms. Jewett on December 18, 2007 did not involve unreasonable delay and was based on a "current act." See 871 IAC 24.32(8).

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

**DECISION:**

The Agency representative's January 9, 2008, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and 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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