

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAKESIA M YANCY
Claimant

APPEAL NO. 08A-UI-04326-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOTHER HUBBARD'S CUPBOARD
Employer

**OC: 03/30/08 R: 12
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

LaKesia Yancy filed a timely appeal from the April 22, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was commenced on May 20, 2008 and concluded on May 23, 2008. Ms. Yancy participated. Greg Evans, Vice President, represented the employer and presented additional testimony through Jeff Odle, Market Manager, and Mark Carlton, Store Manager. Exhibits Two through Eight and A 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: LaKesia Yancy commenced her employment with Mother Hubbard's Cupboard on January 11, 2008 and worked as the full-time Store Manager of a convenience store in Moline. Jeff Odle, Market Manager, was Ms. Yancy's immediate supervisor. Mark Carlton was the Assistant Manager for Store #8, but since Ms. Yancy's separation has become Store Manager for Store #8.

On March 25, 2008, Mr. Odle suspended Ms. Yancy pending completion of the employer's investigation into an incident that occurred on March 22. The employer subsequently discharged Ms. Yancy on March 31, 2008.

On February 24, Ms. Yancy had conducted an employee staff meeting at Store #8. Ms. Yancy thought she had been sufficiently amiable up to that point and that it was now time to address with the employees the problems she saw at the store. Mr. Odle observed the meeting and, after the meeting, expressed concern about the exclusively negative tone of the meeting.

On February 25, Mr. Odle and Vice President Greg Evans met with Ms. Yancy to discuss their concerns about Ms. Yancy's handling of disciplinary matters at the store. The employer had received complaints from employees that Ms. Yancy treated them like children and that she spoke to them in a patronizing, condescending manner. The employer acknowledged that there

were issues that needed to be addressed at the store, but encouraged Ms. Yancy to be more circumspect and less aggressive in addressing matters of discipline.

Additional similar employee complaints followed the February 25 conference. On March 12, Mr. Evans and Mr. Odle met with Ms. Yancy to discuss a customer complaint and additional employee complaints. Early on, Ms. Yancy became defensive and asserted that she was being unfairly targeted. Ms. Yancy asserted that she had changed her previous approach so that she was now speaking to employees in a manner a two-year-old would understand.

On March 22, Ms. Yancy and Mr. Carlton responded to an employee calling in sick by calling in a new clerk, Natasha Bly. Ms. Bly had worked three shifts for the employer. Ms. Yancy decided it would be acceptable to have Ms. Bly work by herself from 3:00 to 4:30 p.m. Mr. Carlton was scheduled to leave at 3:00 p.m. Another clerk was scheduled to come in at 4:30 p.m. While Ms. Bly was working alone, she made a mistake that locked the convenience store fuel pumps. Ms. Bly contacted Mr. Carlton, who was dining nearby. Mr. Carlton walked Ms. Bly through the process of unlocking the fuel pumps. Ms. Bly had also contacted Ms. Yancy. While Ms. Bly was on the phone with Ms. Yancy she was also tending to a steady stream of customers. At one point, Ms. Bly told Ms. Yancy that she had to assist a customer and placed the phone down. Ms. Yancy overheard Ms. Bly telling a customer that she was working by herself because no one else wanted to come in. Ms. Bly was away from the phone and assisting customers for several minutes. When Ms. Bly came back to the phone, she assumed Ms. Yancy had already hung up. Ms. Bly hung up her end of the line. Soon thereafter, Ms. Yancy appeared at the store. Ms. Yancy first assisted Ms. Bly with attending to the stream of customers. Mr. Carlton then appeared at the store. Then the other clerk appeared at the store.

Once Ms. Bly and Ms. Yancy had attended to the customers, Ms. Yancy grasped Ms. Bly's wrist and led her from behind the counter to a nearby area of the store. Ms. Yancy's grasp of Ms. Bly's wrist was not forceful, but was overtly humiliating. A regular customer was present, as was Mr. Carlton, and both could readily observe the interaction between Ms. Yancy and Ms. Bly. Once Ms. Yancy had escorted Ms. Bly away from the counter, Ms. Yancy chastised Ms. Bly for the comment Ms. Yancy had overheard during the earlier phone call. Ms. Yancy warned Ms. Bly that she had recently written up another clerk for discussing store business with customers. The others present in the store could not hear what Ms. Yancy was saying to Ms. Bly. Ms. Bly had been upset by the humiliating experience of being led by the wrist and was further upset by Ms. Yancy's threat of a reprimand. Ms. Bly told Ms. Yancy, "I don't have to take this shit" and that she would not be treated like a child. Ms. Bly exited the store. Mr. Carlton followed Ms. Bly out of the store in an attempt to calm Ms. Bly and to find out what had just occurred. Ms. Bly told Mr. Carlton that she had felt belittled by Ms. Yancy. Ms. Bly then left the workplace. When Mr. Carlton re-entered the store, Ms. Yancy was speaking with the regular customer about the incident. Ms. Yancy told Mr. Carlton to get a termination form because she was done with "the little drama queen."

A short while after Ms. Bly departed, Ms. Yancy contacted Mr. Odle to report that she was going to discharge Ms. Bly from the employment because she was speaking with customers about company business and because of the outburst. Ms. Yancy failed to mention how her own actions had contributed to Ms. Bly's outburst. Later that day, Ms. Bly contacted Mr. Odle to explain why she had walked out.

On March 24, Mr. Odle went to Store #8 to review video surveillance that included the incident between Ms. Yancy and Ms. Bly. The surveillance record did not include audio. While Mr. Odle

was at the store, Ms. Yancy mentioned for the first time that she had grasped Ms. Bly's wrist to lead her away from the counter on March 22.

On March 24, Mr. Odle discussed the March 22 incident with Vice President Greg Evans. On March 24-25, Mr. Odle collected statements from Ms. Bly, Mr. Carlton, Ms. Yancy and from clerk Marsha Edwards. Ms. Edwards had not been present on March 22, but Ms. Yancy had spoken to Ms. Edwards about the incident on March 24.

On March 25, Mr. Odle and Vice President Greg Evans notified Ms. Yancy that she would be suspended while they completed their investigation. On March 31, Mr. Odle and Mr. Evans held a brief meeting with Ms. Yancy to notify her 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:

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 evidence does not establish that Ms. Yancy willfully or wantonly disregarded the interests of the employer in connection with the March 22 incident. The evidence does not establish that Ms. Yancy's physical contact with Ms. Bly was forceful or assaultive. The administrative law judge notes that the employer has not submitted a copy of the video surveillance as evidence.

The greater weight of the evidence in the record does establish that Ms. Yancy was careless and negligent on March 22. Ms. Yancy exercised very poor judgment when she decided to grasp Ms. Bly by the wrist, lead Ms. Bly by the wrist, and then threaten Ms. Bly with a reprimand. A reasonable person in Ms. Bly's position would have found the physical contact humiliating. A reasonable person in Ms. Yancy's position would have known the physical contact would be humiliating to Ms. Bly. Ms. Yancy's carelessness on March 22 went beyond the physical contact with Ms. Bly. Ms. Yancy was careless in assigning a new employee to work alone. Ms. Yancy was careless in speaking with the customer about the incident between herself and Ms. Bly.

Despite Ms. Yancy's mishandling of the incident with Ms. Bly on March 22, the evidence fails to establish any other instances of carelessness or negligence. In other words, the evidence fails to establish a pattern of carelessness and/or negligence so recurrent as to indicate a willful or wanton disregard of the interests of the employer. The administrative law judge finds no merit in Ms. Yancy's assertion that she was targeted and/or discharged as a result of a racially motivated conspiracy. The evidence indicates that Ms. Yancy lacked the interpersonal skills she needed to successfully manage Store #8. However, lack of ability is not misconduct and would not disqualify Ms. Yancy for unemployment insurance benefits. See 871 IAC 24.32(1)(a).

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

DECISION:

The Agency representative's April 22, 2008, 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