

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**SAMANTHA L WILSON**

Claimant

**APPEAL NO. 18A-UI-10517-JTT**

**CORRECTED  
ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 09/16/18**

**Claimant: Respondent (2)**

Iowa Code Section 96.5(2)(a) – Discharge  
Iowa Code Section 96.3(7) – Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the October 12, 2018, reference 02, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on September 17, 2018 for no disqualifying reason. A hearing was scheduled for November 5, 2018. On November 1, 2018, this matter was erroneously dispositioned as a withdrawn appeal and the November 5, 2018 hearing was cancelled. The employer had not withdrawn the appeal pertaining to this matter. The employer brought the dispositioning error to the attention of the Appeals Bureau on November 6, 2018. The hearing record was reopened and the appeal hearing was held on November 7, 2018. Claimant Samantha Wilson participated. Kayla Gardner represented the employer. Exhibits 1 through 7 were received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant. The administrative law judge took official notice of the documents submitted for and created in connection with the fact-finding interview for the limited purposes of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

**ISSUES:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

Whether the claimant was overpaid unemployment insurance benefits.

Whether the claimant must repay benefits.

Whether the employer's account may be charged.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Samantha Wilson was employed by Casey's Marketing Company during two distinct periods. The most

recent employment began in November 2017 and ended on September 17, 2018, when Store Manager Kayla Gardner and Area Supervisor Nancy North discharged Ms. Wilson from the employment. Throughout the most recent period of employment, Ms. Wilson was a full-time Assistant Manager at the Casey's store in Essex. Ms. Gardner became manager of the Essex store in February 2018. Ms. North supervised Ms. Wilson and Ms. Gardner. Ms. Gardner also had authority to direct Ms. Wilson's work.

The incident that triggered the discharge occurred on Friday, September 14, 2018. On that day, Ms. Wilson was the manager on duty at the Essex store while Ms. Gardner filled in as manager at another store. That day was "truck day" at the Essex store. The Essex store was short-staffed for a truck day and only one person, Tasha, was staffing the kitchen at the time the kitchen freight needed to be put away. Ordinarily the Essex store would have two people working in the kitchen at the time the freight needed to be put away, so that one could continue to operate the kitchen and the other could put the freight away. Another kitchen employee, Julie, had come in on her scheduled day off to assist with unloading the truck. However, Ms. Gardner had given Julie permission to leave once the truck was unloaded and before the freight was put away. One-third of the freight, 30 to 40 boxes, was kitchen freight. Ninety percent of the kitchen freight required refrigeration and needed to be put away quickly so that it did not thaw. The other two-thirds of the freight was deposited in totes on the sales floor. After the truck was unloaded, Ms. Wilson made a bank run and then began putting away the freight that was deposited on the sales floor. Ms. Wilson left the kitchen freight to Tasha. Ms. Wilson was aware at the time that leaving the kitchen freight sitting out for an extended period could result in spoilage.

After the truck was unloaded, Tasha contacted Ms. Gardner to complain that no one would help her put away the kitchen freight. Besides Ms. Wilson and Tasha, there were two other employees at the Essex store at that time. Ms. Gardner called Ms. Wilson. Ms. Gardner asked Ms. Wilson how the truck was going and whether the kitchen freight was put away. Ms. Wilson told Ms. Gardner that she should not have to assist Tasha with putting away the kitchen freight because Ms. Wilson had recently performed the same set of duties without assistance. Ms. Gardner instructed Ms. Wilson to assist with putting away the kitchen freight. Ms. Wilson replied, "Whatever." The call then terminated. Ms. North was present at Ms. Gardner's end of the call and heard the exchange between Ms. Wilson and Ms. Gardner. Ms. Wilson did not assist Tasha with putting the kitchen freight away, but instead directed Tasha to put the freight away. On September 15, Ms. Gardner reviewed surveillance video of the September 14 incident. Ms. Wilson saw that after the call had ended on September 14, Ms. Wilson had spoken with the two other employees and then had directed Tasha to put the kitchen freight away. Ms. Gardner observed on the surveillance video that the frozen freight in need of refrigeration was sitting out for an hour before Tasha put it away. On September 17, Ms. Gardner notified Ms. Wilson that she was discharged for failure to perform duties assigned to her as the assistant manager on more than one occasion. At the time of discharge, Ms. Gardner refused Ms. Wilson's request that Ms. Gardner state the duties she had failed to perform.

The employer's decision to discharge Ms. Wilson followed another incident at the beginning of August 2018, wherein Ms. Wilson shared her confidential logon credentials with another employee. Ms. Wilson had forgotten to clock out on the day in question. After Ms. Wilson left the store for the day, she contacted another employee and asked that employee to clock her out. Ms. Wilson provided her logon credentials to the other employee so that the other employee could clock her out. Ms. Wilson was aware that the employer's work rules prohibited her from sharing her confidential logon credentials with other employees. Ms. Wilson was also aware that having someone else clock her out when she was not present was not the required procedure for addressing a missed clock out. Ms. Wilson was also aware that she was required

to accurately report her work time. Ms. Wilson would use her logon credentials not only to document her work time, but also to perform manager duties involving the cash register. By sharing the logon credentials, Ms. Wilson effectively gave the other employee access to the manager functions that came with the logon credentials. Ms. Gardner issued a reprimand to Ms. Wilson on August 3, 2018 in connection with the matter.

Two additional matters factored in the discharge decision. On February 14, 2018, Ms. Wilson's cash register drawer was short \$39.40 for an undetermined reason not involving theft. On February 20, 2018, Ms. Gardner issued a reprimand to Ms. Wilson in connection with the incident. Ms. Wilson refused to sign the reprimand. On July 23, 2018, Ms. Wilson did not clean the restrooms, stock the cooler, or empty the outside trash area because the store got busy and she was performing other duties. Ms. Gardner was on maternity leave at the time. On July 24, a substitute manager prepared a reprimand, but did not issue it to Ms. Wilson.

Ms. Wilson established a claim for unemployment insurance benefits that Iowa Workforce Development deemed effective September 16, 2018. Ms. Wilson received \$1,310.00 in benefits for the five-week period of October 7, 2018 through November 10, 2018. Casey's is a base period employer in connection with the claim.

On October 10, 2018, an Iowa Workforce Development Benefits Bureau deputy held a fact-finding interview that addressed Ms. Wilson's separation from the employment. Krista Skinner, an Unemployment Claim Specialist from Equifax, represented the employer at the fact-finding interview. Ms. Skinner lacked personal knowledge concerning the basis for the discharge. Ms. Skinner provided a cursory verbal statement to the deputy indicating that Ms. Gardner had discharged Ms. Wilson for failure to perform duties a manager had assigned to her. Neither Ms. Skinner's verbal statement nor the documentation Equifax submitted on behalf of the employer for the fact-finding interview set forth the particulars of the final incident that triggered the discharge. Ms. Wilson participated in the fact-finding interview by providing a verbal statement to the deputy. Ms. Wilson stated that she had been discharged by Ms. Gardner for failure to perform job duties, but asserted that she had not refused to do a job and had no recollection of a purported verbal warning. Ms. Wilson also stated that when she had asked what duties she had failed to perform, Ms. Gardner did not name any. Ms. Wilson had been well aware at the time of the September 17 discharge that the discharge was triggered by the freight matter from September 14 and was based in part on her failure to follow Ms. Gardner's directive to assist with putting away the kitchen freight. During the fact-finding interview, Ms. Wilson asserted that she had received no prior warnings, though she had received a reprimand as recently as August 3, 2018.

## **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). In *Gilliam v. Atlantic Bottling Company*, the Iowa Court of Appeals upheld a discharge for misconduct and disqualification for benefits where the claimant had been repeatedly instructed over the course of more than a month to perform a specific task and was part of his assigned duties. The employer reminded the claimant on

several occasions to perform the task. The employee refused to perform the task on two separate occasions. On both occasions, the employer discussed with the employee a basis for his refusal. The employer waited until after the employee's second refusal, when the employee still neglected to perform the assigned task, and then discharged employee. See *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

The weight of the evidence in the record establishes a discharge based on misconduct in connection with the employment. On September 14, 2018, Ms. Wilson knowingly and unreasonably prioritized the bank run and putting away the non-refrigerated freight over assisting with getting the perishable kitchen freight put away. Ms. Wilson concedes that she knew the kitchen freight should have been put away first to avoid spoilage and to prevent loss to Casey's. Ms. Wilson made matters worse by responding, "Whatever," when Ms. Gardner directed her to assist Tasha with putting away the kitchen freight. Ms. Wilson made matters worse after the telephone call by not complying with Ms. Gardner's directive to assist with putting away the kitchen freight. The situation went beyond mere unreasonable refusal to follow a reasonable directive and involved a potential public health issue. Ms. Wilson's action on September 14 demonstrated a willful and wanton disregard of the employer's interests in food safety and in protecting the employer's assets. The final incident followed another incident at the start of August, wherein Ms. Wilson once again demonstrated a willful and wanton disregard for the employer's interests. In that incident, Ms. Wilson knowingly and intentionally violated multiple Casey's policies when she gave her logon credentials to another employee and had them log her out. These two incidents, occurring weeks apart, were sufficient to establish disqualifying misconduct in connection with the employment. Accordingly, Ms. Wilson is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. Ms. Wilson must meet all other eligibility requirements.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the base period employer failed to participate in the initial proceeding, the base period employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)(a) and (b).

Ms. Wilson received \$1,310.00 in benefits for the five-week period of October 7, 2018 through November 10, 2018. This decision disqualifies her for those benefits. Accordingly, the benefits constitute an overpayment of benefits.

Iowa Administrative Code rule 817-24.10(1) defines employer participation in fact-finding interviews as follows:

Employer and employer representative participation in fact-finding interviews.  
24.10(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or

documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

The employer did not meet the participation requirement in connection with the fact-finding interview. Ms. Skinner's cursory statement at the fact-finding interview was not based on personal knowledge and was exceedingly vague. The documentation the employer representative submitted for the fact-finding interview was also lacking particulars regarding the incident that triggered the discharge. The information the employer provided for the fact-finding interview was insufficient, if unrebutted, to prove misconduct in connection. However, Ms. Wilson made intentionally misleading statements at the fact-finding interview when she pleaded ignorance of the basis for the discharge, when she asserted she had not failed to follow a directive, and when she asserted she had no prior warnings. Ms. Wilson knew these utterances were false when she made them. Because Ms. Wilson made intentionally misleading statements at the fact-finding interview, she is required to repay the overpaid benefits. The employer's account shall be relieved of liability for benefits, including liability for benefits already paid to Ms. Wilson.

**DECISION:**

The October 12, 2018, reference 02, decision is reversed. The claimant was discharged on September 17, 2018 for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements. The claimant is overpaid \$1,310.00 in benefits for the five-week period of October 7, 2018 through November 10, 2018. The claimant must repay the overpaid benefits. The employer's account shall be relieved of liability for benefits, including liability for benefits already paid to the claimant.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs