

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI	
VIRGINIA J PETERSON Claimant	APPEAL NO. 18A-UI-11582-JTT
CASEY'S MARKETING COMPANY Employer	ADMINISTRATIVE LAW JUDGE DECISION
	OC: 12/31/17 Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 19, 2018, reference 07, 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 Benefits Bureau deputy's conclusion that the claimant was discharged on October 25, 2018 for no disqualifying reason. After due notice was issued, a hearing was held on December 14, 2018. Claimant Virginia Peterson did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. Connie Sublette represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant, which record reflects that no benefits have been disbursed to the claimant. Exhibits 1, 2, 3 and 5 were received into evidence. The administrative law judge took official notice of the claimant's sex offender registry information available to the public at www.iowasexoffender.com.

ISSUES:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance 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: Virginia Peterson was employed by Casey's Marketing Company as a full-time Assistant Manager at the employer's Lake Canyada store in Davenport until October 25, 2018, when the employer's corporate human resources personnel discharged her from the employment. Connie Sublette, Area Supervisor, notified Ms. Peterson of the discharge decision. Ms. Peterson had commenced her employment with Casey's in February 2018 at the employer's Andalusia, Illinois store and had transferred to the Davenport store on September 10, 2018. On October 25, 2018, the employer received an anonymous tip that Ms. Peterson was a registered sex offender. At about the same time, two young adult male employees notified the employer that Ms. Peterson had made inappropriate comments directed at them. One employee reported that Ms. Peterson had touched his face and back without permission and had threatened to touch his rear. The other male employee alleged that Ms. Peterson told him to stick particular merchandise "up his butt." When the employer looked into the sex offender registry, the employer learned that Ms. Peterson was indeed on the registry. The registry information reflects a "conviction" on September 4, 2018 for Sexual Abuse 3rd Degree and Telephonic

Dissemination of Obscene Material, with the victim being a male between 14 and 17 years old. The registry defines "conviction" as including deferred judgments. Ms. Peterson's presence on the sex offender registry did not prohibit her from working in a retail environment such as Casey's. Casey's written policies included a requirement that Ms. Peterson immediately disclose to her immediate supervisor any post-employment criminal conviction and subjected her to corrective action up to and including discharge from the employment for failure to disclose. The policy was contained in the employee handbook that the employer made available to Ms. Peterson at an ADP portal/dashboard. Ms. Peterson had not disclosed the "conviction" to the employer.

Ms. Peterson established an original claim for benefits that was effective December 31, 2017 and an additional claim that was effective October 28, 2018. Ms. Peterson has not received benefits in connection with the claim.

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 Iowa Administrative Code rule 871-24.32(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 Iowa Administrative Code rule 871-24.32(4).

The evidence in the record establishes a discharge for misconduct in connection with employment, based on Ms. Peterson's failure to disclose the September 4, 2018 "convictions" to the employer. Ms. Peterson's failure to disclose the matter to the employer was a violation of the employer's written policy. Ms. Peterson's failure to disclose the matter to the employer placed the employer at risk of liability for any sexually inappropriate actions Ms. Peterson might take, or might be accused of taking, in connection with the employment. The employer had reasonable cause, based on the complaints from two young adult male staff, to be concerned about such matters in connection with Ms. Peterson's employment. Ms. Peterson is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. Ms. Peterson must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

Because Ms. Peterson has received no benefits, there is no overpayment issue.

DECISION:

The November 19, 2018, reference 07, decision is reversed. The claimant was discharged on October 25, 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 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs