

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LINDA G KRUGER**  
Claimant

**APPEAL NO. 09A-UI-10360-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**  
Employer

**Original Claim: 06/07/09  
Claimant: Respondent (2-R)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the July 9, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on August 5, 2009. Claimant Linda Kruger participated. Rob Wells, Area Supervisor, represented the employer. Exhibits One through Eight 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: Linda Kruger was employed by Casey's as a full-time store manager from 2002 until May 27, 2009, when Rob Wells, Area Manager, discharged her from the employment. Mr. Wells was Ms. Kruger's immediate supervisor.

At the time Mr. Wells discharged Ms. Kruger from the employment, he cited three reasons for the discharge. The first reason referenced was Ms. Kruger's failure to use the floor stripping machine Mr. Wells had provided for that purpose. The second reason referenced was Ms. Kruger's failure to use the proper method when checking in merchandise delivered by vendors. The third reason referenced was Ms. Kruger having another employee clock her out after she had left the store for the day.

On May 26, 2009, Mr. Wells had reviewed video surveillance for the Sheldon store. Mr. Wells observed that on May 12, Ms. Kruger had left the store for the day at 12:30 p.m. Time reporting records indicated that Ms. Kruger had clocked out at 1:00 p.m. Ms. Kruger was a salaried employee, was required to work nine hours per shift, and was required to notify Mr. Wells if she left work early. Ms. Kruger was required to clock in when she arrived at the store and clock out when she left. Ms. Kruger was to use the last four numbers of her social security number as the personal access code she had to enter to clock in or out. The employer's work rules prohibited Ms. Kruger from sharing that code with another employee or having another employee clock her

in or out. Ms. Kruger was aware of these requirements. On May 12, Ms. Kruger had another employee, Ruth Hoogland, clock her out half an hour after Ms. Kruger left the store. This was the only time Ms. Kruger had asked Ms. Hoogland to clock her out. Ms. Kruger had provided Ms. Hoogland with her access code. Ms. Kruger had not notified Mr. Wells when she left the store.

With regard to Ms. Kruger's failure to use the stripping machine Mr. Wells had left at the store, Ms. Kruger could not operate the machine because she had an abdominal stoma and the machine rubbed against the stoma when she tried to use it. Ms. Kruger found she could get equally good results by using a buffing machine. Ms. Kruger did not tell Mr. Wells that she was not using the stripping machine.

With regard to the issue with checking in the vendors, Ms. Kruger has used the same method throughout her employment. The employer's system required that the vendor stack all of the delivered merchandise at a designated location on the store's retail floor. Ms. Kruger was then to check in the merchandise and put it away. Ms. Kruger found that this system blocked traffic in the store. Ms. Kruger used a system whereby she would check in the merchandise as the vendor brought it in so that it did not need to be stacked on the retail floor.

## **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).

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).

With regard to the stripping machine issue and the merchandise check-in issues, the weight of the evidence indicates that the employer reasonably expected that Ms. Kruger would follow the employer's directives. But the evidence also establishes that Ms. Kruger had good cause for deviating from those directives. There was no insubordination and no misconduct in connection with these two issues.

Ms. Kruger asserts she was ignorant of multiple policies she was charged with enforcing. That testimony was not credible. The weight of the evidence indicates that on May 12, 2009, Ms. Kruger knowingly violated multiple policies in connection with her early departure from the store. She left the store without clocking out and without notifying Mr. Wells that she was leaving the store early. She gave her personal access code to another employee and had that employee clock her out in violation of the employer's written policy. That Ms. Kruger involved one of her subordinates in her violation of the employer's time reporting policy is an aggravating factor.

The weight of the evidence does establish that Ms. Kruger acted with willful and wanton disregard of the employer's interests when she enlisted a subordinate to help her create a fraudulent record of her work time on May 12, 2009. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Kruger was discharged for misconduct. Accordingly, Ms. Kruger 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. Kruger.

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

**DECISION:**

The Agency representative's July 9, 2009, reference 01, decision is reversed. The claimant was discharged for misconduct. 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 allowance, provided she meets all other eligibility requirements. The employer's account will not be charged.

This matter is remanded to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw