

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BILLIE J BAYER
Claimant

APPEAL NO. 15A-UI-02099-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

APAC CUSTOMER SERVICES INC
Employer

OC: 01/25/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 9, 2015, reference 01, decision that disqualified the claimant for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that the claimant had been discharged on January 26, 2015 for misconduct in connection with the employment. After due notice was issued, a hearing was held on March 25, 2015. Claimant participated. Turkessa Newsome represented the employer and presented additional testimony through Tammy Mason, Sonja Johnson, and Sarah Row.

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: The claimant was employed as a full-time team leader until January 26, 2015, when the employer discharged her from the employment. The claimant was responsible for supervising a 15 to 20 telemarketers in the employer's call center. On January 23, 2015, the claimant arranged for one of her subordinates to give her a haircut on the call center floor in view of anyone who wandered by. The claimant knew that the subordinate was a cosmetologist and requested the haircut early in the shift. The haircut took place toward the end of the shift. The claimant and the subordinate set up a makeshift cosmetology station. The subordinate used her cosmetology scissors. The claimant's hair fell onto the floor of work area where she and/or the subordinate had laid a plastic bag to collect the hair. The hair spilled out beyond the plastic. The claimant and the subordinate were both on the clock at the time of the haircut. Another Team Lead confronted the claimant about the haircut when she came up on the scene. That Team Lead and another reported the conduct to the employer. There was no crisis that necessitated the haircut.

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.

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). 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 in the record establishes that claimant demonstrated a willful and wanton disregard of the employer's interests by having a subordinate cut her hair on the employer's call center floor at a time when the claimant and the subordinate were supposed to be engaged in work on behalf of the employer. The claimant took the subordinate away from other duties, work that employer charged to the employer's client, to give the claimant the haircut. The claimant's conduct was wholly inappropriate for the work environment and was disruptive to the work environment. Though the claimant's job was to supervisor several subordinates, the claimant enlisted one subordinate in non-work-related conduct and set a terrible example for others in the workplace. The weight of the evidence indicates that the claimant intentionally misrepresented the circumstances and details of the incident during her testimony at the appeal hearing.

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

DECISION:

The February 9, 2015, reference 01, decision is affirmed. 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 shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css