

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LINDA WATSON

Claimant

APPEAL NO. 19A-UI-09910-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BETTENDORF COMMUNITY SCHOOL

Employer

OC: 11/10/19

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Linda Watson filed a timely appeal from the December 11, 2019, reference 02, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Ms. Watson was discharged on October 30, 2019 for violation of a known company rule. After due notice was issued, a hearing was held on January 13, 2020. Ms. Watson participated. Kayla Leu represented the employer and presented additional testimony through Maile Mejia. Exhibits 1, 2 and 3 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 Watson was employed by Bettendorf Community School District as a part-time Food Preparation and Service employee from 2005 until October 30, 2019, when the employer discharged her from the employment. Kayla Leu, Director of Nutrition Services, was Ms. Watson's immediate supervisor during the last several years of the employment. Throughout the employment, Ms. Watson performed breakfast and lunch duties at Herbert Hoover Elementary School. Ms. Watson's work hours were Monday through Friday, 7:30 a.m. to 9:00 a.m. and 10:15 a.m. to 1:15 p.m.

The employer's decision to discharge Ms. Watson was based on two instances in which Ms. Watson failed to follow food safety requirements and exposed approximately 200 students to the risk of food-borne illness. The final conduct that factored in the discharge occurred on October 30, 2019. Between 7:30 a.m. and 7:40 a.m., a food service driver delivered to Ms. Watson a "hot-holding unit" that contained approximately 200 turkey and cheese sandwiches to be served to the students at lunch. The unit also held frozen juice. Ms. Watson had received training in safe food handling and knew she was supposed to immediately transfer the cold sandwiches and juice from the hot-holding unit to a cooler or refrigerator. The hot-

holding unit was not a refrigerated unit and was not designed to keep cold items cold for an extended time. Ms. Watson left from the first portion of her shift between 9:00 and 9:10 a.m. without transferring the items from the hot-holding unit to the cooler or refrigerator and without notifying the employer of any issues that would have prevented her from transferring the items. At 10:15 a.m., the food service driver discovered the items were still in the hot-holding unit and reported the food safety violation to the employer. When the employer met with Ms. Watson to discuss the final incident, the employer noted Ms. Watson's off-the-cuff remark that she did not care whether she was fired. Ms. Watson asserts there was insufficient room in the coolers and refrigerators and that one of the cooling units was non-functional. The employer disputes that assertion. Ms. Watson had not alerted the employer to any such concerns prior to leaving the items in the hot-holding unit for an extended period.

An almost identical food safety violation had occurred on May 17, 2017, when Ms. Watson left yogurt in a hot-holding unit for three hours, during which time the temperature of the hot holding unit rose to a temperature that exceeded the food safety requirement. On the date in question, there was a special event at the elementary school and more than the usual number of people present at the elementary school. Ms. Watson cites the presence of additional people and space taken up by those people and their outerwear as the basis for not transferring the yogurt into the cooler or refrigerator pursuant to food safety requirements. Ms. Watson had not alerted the employer to any such concerns prior to leaving the items in the hot-holding unit for an extended period. On May 19, 2017, the employer issued a written reprimand to Ms. Watson that included the following:

This action serves as formal notification that the district expects all cold items delivered in the morning to be put away as soon as your shift begins. This must be done regardless of any unforeseen circumstances happening at your designated school location in accordance with the Employer Code of Conduct: Inadequate Preparation of Employee Job Responsibilities. It is recommended that you consider the seriousness of your misconduct, since failure to remediate the actions or behaviors referenced herein may result in further disciplinary action, up to and including suspension or dismissal.

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).

The evidence in the record establishes a discharge based on misconduct in connection with the employment. The evidence in the record established two almost identical incidents of gross negligence. The weight of the evidence establishes that Ms. Watson was fully aware of safe food handling requirements before the first incident, but unreasonably elected not to follow them. The weight of the evidence establishes that Ms. Watson again unreasonably elected not to follow safe food handling requirements in connection with the final incident that triggered the discharge. The employer reasonably expected Ms. Watson to follow safe food handling

practices and reasonably directed her to do that. Ms. Watson's repeated failure to follow safe food handling practices constituted insubordination. Ms. Watson's conduct demonstrated an intentional and substantial disregard of the employer's interests and of the safety of the students she was employed serve. Ms. Watson unreasonably minimizes and excuses the seriousness of her conduct and the associate public health risk. Ms. Watson 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. Watson must meet all other eligibility requirements. The employer's account shall not be charged.

DECISION:

The December 11, 2019, reference 02, decision is affirmed. The claimant was discharged 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

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