

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER J LARSEN
Claimant

APPEAL NO. 15A-UI-02558-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHECK INTO CASH OF IOWA INC
Employer

OC: 02/08/15
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 19, 2015, reference 01, decision that 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 an Agency conclusion that the claimant had been discharged on February 7, 2015 for no disqualifying reason. After due notice was issued, a hearing was held on March 31, 2015. Claimant Jennifer Larsen participated. Stuart Larimer of U.C. Advantage represented the employer and presented additional testimony through Cathy Bormann. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits One through Thirteen into evidence. The administrative law judge took official notice of the fact-finding materials for the limited purpose 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.

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: Jennifer Larsen was employed by Check Into Cash of Iowa, Inc. as a full-time customer service representative from May 2014 until February 9, 2015 when Cathy Bormann, District Manager, discharged her from the employment. Ms. Larsen's duties included assisting customers with payday loans, money orders, check cashing, money transfers, and other associated duties. Ms. Larsen would handle 25 transactions during a shift on average.

The final events that triggered the discharge occurred on February 7, 2015. On that day, Ms. Larsen had made an error when disbursed cash to customer and disbursed \$145 more than she should have. Ms. Larsen was supposed to do hourly trial balance reports and enter that information into the employer's computer system. The employer required hourly trial balance reports as a means of discovering cash handling errors as quickly as possible and as a means

of making it easier to discern the particular transaction giving rise to the error. Ms. Larsen had received appropriate training in preparing the trial balance reports. On February 7, 2015, Ms. Larsen had started work at 10:00 a.m. but did not do her first trial balance report until 1:50 p.m.; at which time she discovered that her drawer was \$145 short. The employer believes that Ms. Larsen's error most likely occurred when she accidentally paid out \$445 for what had been a \$300 loan. Those two amounts are popular payday loan amounts that the employer offers to customers. Ms. Larsen notified Ms. Bormann of the shortage per policy. Ms. Larsen attempted to locate the source of the error but was unable to locate the error. On February 9, 2015, Ms. Larsen was at work when Ms. Bormann arrived for the purpose of discharging her from the employment. Ms. Larsen knew that a variance greater than \$100 was grounds for discharge from the employment under the employer's cash handling policies. When Ms. Bormann said "Jennifer, what are we going to do with you?"; Ms. Larsen correctly discerned that she was being discharged from the employment. Ms. Larsen turned in her keys and departed from the workplace.

The employer considered another cash handling error when the employer decided to discharge Ms. Larsen from the employment. On August 9, 2014, Ms. Larsen had miscounted when disbursing change to a customer in connection with a money order purchase and provided the customer with an extra \$56. The employer had a procedure for counting money three times in connection with each transaction to ensure the accuracy of the count. The employer reminded Ms. Larsen of the procedure at the time of the reprimand and warned her that future similar issues could leave to discharge from the employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 Ms. Larsen was careless and/or negligent in the performance of her work duties on February 7, 2015. She was careless and/or negligent in disbursing the incorrect amount to a customer, giving rise to a \$145 cash shortage for the employer. She was negligent in failing to perform the hourly trial balance prior to 1:50 p.m. Ms. Larsen had also been careless and/or negligent on August 9, 2014, when she disbursed an extra \$56 to a customer. Ms. Larsen's carelessness and/or negligence on February 7 and the error on August 9 are insufficient to establish misconduct in connection with the employment. Ms. Larsen made a mistake in counting money on August 9 and made a similar mistake on February 7. Given the volume of transactions Ms. Larsen handled in the course of the employment, more than a 100 per week, errors were bound to occur from time to time; no matter what safeguard procedures the employer put in place. Ms. Larsen was negligent in failing to perform and/or document two or three hourly trial balance reports on February 7 but the evidence does not establish any other similar failure. The evidence indicates a couple isolated incidents or ordinary negligence but does not establish a pattern of carelessness and/or negligence indicating a willful or wanton disregard of the employer's interests. While the decision to end the at-will employment was within the discretion of the employer, the evidence does not establish misconduct that would disqualify Ms. Larsen for unemployment insurance benefits. Ms. Larsen is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The February 19, 2015, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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