

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANNETTE S FLAHERTY
Claimant

APPEAL NO. 11A-UI-09239-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA CIVIL RIGHTS COMMISSION
Employer

OC: 06/19/11
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Annette Flaherty filed a timely appeal from the July 13, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 4, 2011. Ms. Flaherty participated. Beth Townsend, Executive Director, represented the employer and presented additional testimony through Diana Sisler and Don Grove. Exhibits One through Nine 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: Annette Flaherty was employed by the Iowa Civil Rights Commission as a full-time Clerk Advanced Specialist from 1995 until June 16, 2011, when Beth Townsend, Executive Director, discharged her from the employment. Ms. Flaherty's immediate supervisor was Diana Sisler, Public Service Executive One. On May 24, 2011, an employee reported to Ms. Sisler that Ms. Flaherty had taken into her possession a civil rights complaint a former employee of the Iowa Civil Rights Commission had filed against the Commission and that Ms. Flaherty had disclosed the contents of that complaint to other staff. Another employee had brought the complaint to Ms. Flaherty's attention. Ms. Flaherty had then taken the additional steps of taking the complaint into her possession, concealing it in a file folder, and sharing the complaint document with at least two coworkers. Ms. Flaherty had also taken the additional steps of talking to additional coworkers about the complaint.

Ms. Flaherty had no legitimate, work-related reason to view the complaint, to take the complaint into her possession, or to share the complaint with other staff. Ms. Flaherty knew that Civil Rights complaints were confidential documents under the law and under the employer's work rules. Ms. Flaherty knew that she was prohibited from disclosing information pertaining to a civil rights complaint, except as necessary in the course of performing her duties. Ms. Flaherty knew

that a civil rights complaint against the Iowa Civil Rights Commission would be referred to another agency to avoid a conflict of interest.

On May 25, Director Townsend prepared a letter of suspension and provided that to Ms. Flaherty. The letter suspended Ms. Flaherty with pay until the employer completed its investigation into the matter. Ms. Flaherty understood at the time of the suspension that she faced possible discharge from the employment as a result of her conduct.

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).

The evidence establishes that Ms. Flaherty knowingly and intentionally violated a statutory rule and an agency rule that prohibited her from disclosing confidential information contained pertaining civil rights complaint except where necessarily in the performance of her duties. Ms. Flaherty knew at the time she learned of the complaint that she had no authorization to review it. Ms. Flaherty knew at the time she elected to broadcast information concerning the complaint to her coworkers that her conduct was prohibited and contrary to the interests of the complainant and the Iowa Civil Rights Commission. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Flaherty was discharged for misconduct. Accordingly, Ms. Flaherty 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. Flaherty.

DECISION:

The Agency representative's July 13, 2011, 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 will not be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs