

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KEISHA K HARDAWAY**  
Claimant

**APPEAL NO. 14A-UI-12578-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**  
Employer

**OC: 11/09/14  
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 November 26, 2014, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged, based on an Agency conclusion that the claimant had been discharged for no disqualifying reason. After due notice was issued, a hearing was held on January 5, 2015. Claimant Keisha Hardaway participated. Scott Faber represented the employer and presented testimony through Susan Bishop and Ron Niermeyer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits One through Six, Eight through 11 and A, B and C 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: Keisha Hardaway was employed by Casey's Marketing as a full-time associate until November 11, 2014, when Area Supervisor Ron Niermeyer discharged her from the employment. Ms. Hardaway had started her employment with Casey's at a store in Minnesota. In Spring 2013, Ms. Hardaway transferred to a part-time position in Ankeny. A short while after that a full-time position became available that the Casey's store on the west side of Ankeny and Ms. Hardaway was promoted to that position, where she remained for about a year before she was discharged. Ms. Hardaway's immediate supervisor at the west side store was Store Manager Sydney Blom. Ms. Blom would routinely direct belligerent comments and behavior at Ms. Hardaway and other staff. Ms. Blom had the habit of engaging in inappropriate conduct toward Ms. Hardaway and other employees. Ms. Hardaway is an African-American person. Ms. Blom would comment that certain things were "niggerish." Ms. Blom would step out during work shifts to smoke marijuana. Ms. Hardaway had complained to Area Manager Ron Niermeyer, but the conduct continued.

The final incident that triggered the discharge occurred on November 11, 2014. Ms. Hardaway reported to work on time for her 6:00 a.m. shift, but was in pain due to severe menstrual cramps. Ms. Hardaway told Ms. Blom that she was not feeling good, was in a lot of pain, and that her work performance that day would not be the greatest. Ms. Blom told Ms. Hardaway that she had no problem dealing with her own menstrual cramping and did not know why other females could not deal with cramps as well as she could. Ms. Blom asked Ms. Hardaway whether she was going to be like another female employee and not be able to deal with her menstrual cramping. Ms. Blom had told Ms. Hardaway that she would have to stay at work unless she found someone to cover her shift. The employer's attendance policy required that employees locate their own replacement if they needed to be absent from a shift. Ms. Hardaway had stated to Ms. Blom that she knew no one would be willing to cover the shift on such short notice. Ms. Hardaway asked if she could sit down on the floor behind the register when not dealing with customers. Ms. Hardaway sat down, but was experiencing pain in her legs and back. Ms. Hardaway laid on her side to try to alleviate her pain. When Ms. Blom saw Ms. Hardaway lying down, she told Ms. Hardaway to get up. Ms. Hardaway told Ms. Blom that she was in a lot of pain. Ms. Blom slammed the things she was carrying down on the counter and said, "Fine, just go home!" Ms. Blom told Ms. Hardaway that she summoned Mr. Niermeyer to come to the store. Ms. Hardaway elected to stay long enough to speak with Mr. Niermeyer.

Mr. Niermeyer arrived at the store at about 7:45 a.m. Mr. Niermeyer initially spoke to Ms. Blom. He then summoned Ms. Hardaway to a meeting in the office with him and Ms. Blom. During the meeting Ms. Hardaway and Ms. Blom both raised their voices. Ms. Hardaway perceived that Ms. Blom would not let her speak without interrupting her. Mr. Niermeyer told both to quiet down. They did quiet down momentarily, but then raised their voices again. Mr. Niermeyer was concerned that customers could hear the raised voices. Mr. Niermeyer told Ms. Hardaway to stop talking and to calm down. Mr. Niermeyer asked Ms. Hardaway whether she wanted to continue her employment. Ms. Hardaway has a husband and children and was not interested in leaving the employment. Mr. Niermeyer told Ms. Hardaway that if she wanted to continue working there, she had to be respectful toward Ms. Blom. Mr. Niermeyer told Ms. Hardaway that he did not see the relationship between Ms. Hardaway and Ms. Blom getting resolved, so he was terminating Ms. Hardaway's 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 extenuating circumstances that contributed to the incident on the final day of the employment. The weight of the evidence indicates that Ms. Hardaway was indeed in severe pain that affected her behavior and interaction with Ms. Blom. The weight of the evidence indicates that Ms. Blom handled the matter in a very untactful manner and that Ms. Blom had a habit of engaging in similarly substandard management practices. These factors also contributed substantially to the final incident that

triggered the discharge. The simple solution to the situation was for Ms. Blom to acknowledge that she had a subordinate who was in severe pain, to send the employee home, and follow up a discussion the attendance policy at a later, more appropriate time. Ms. Blom elected instead to unnecessarily escalate the matter to a full confrontation between herself and Ms. Hardaway. It was unreasonable for the employer to expect an employee in such acute pain to linger on the telephone in an attempt to solicit coworkers to come to work so that she could go home. While Ms. Hardaway could have better handled the matter, the mitigating circumstances attending the final incident prevent it from rising to the level of misconduct that would disqualify Ms. Hardaway for unemployment insurance benefits. Whatever happened at the store *after* the discharge was not a factor in the discharge.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Hardaway was discharged for no disqualifying reason. Accordingly, Ms. Hardaway is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

**DECISION:**

The November 26, 2014, 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.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs