

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER S JANES
Claimant

APPEAL NO. 14A-UI-08215-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

K MART CORP
Employer

OC: 07/13/14
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 July 30, 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 was discharged for no disqualifying reason. After due notice was issued, a hearing was held on August 28, 2014. Claimant Jennifer Janes participated and presented additional testimony through Heather Ehrenhard. Sheila Brown, Human Resources Lead, represented the employer and presented additional testimony through Kelly McFarland. Exhibits One through Seven were received into evidence. The administrative law judge took official notice of the agency's record of benefits disbursed to the claimant. 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.

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 Janes was employed by K-Mart Corporation as a Front End Lead until July 9, 2014, when a group of loss prevention managers discharged her for alleged misappropriation of company assets. Ms. Janes had started with the employer in 2012 and had been in the lead position for about four months prior to her discharge. The discharge was prompted by Ms. Janes' conduct in connection with a customer rewards program called Shop You Way Rewards. The employer alleges that Ms. Janes misused the rewards program to obtain unauthorized store discounts. Ms. Janes alleges that she used the program as she had been instructed and was unaware that she was doing anything wrong. A loss prevention officer began to look into the matter at the end of June 2014. Loss prevention officers interviewed Ms. Janes on July 9, 2014. Ms. Janes provided a written statement at that time. The loss prevention officer instructed Ms. Janes on what to write in the statement. The statement indicates that Ms. Janes had "wrongly" used the

rewards program, but has done so to boost participation metrics, not with an intent to cause a loss to the employer.

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 employer presented insufficient evidence, and insufficiently direct and satisfactory evidence, to establish misconduct in connection with the employment. The evidence indicates a discharge based on Ms. Janes' participation in the rewards program, but the evidence is not sufficient to establish that Ms. Janes knowingly or willfully acted contrary to the employer's interests. The employer did not present testimony from any of the loss prevention officers who investigated the matter, interviewed Ms. Janes, and discharged her from the employment. Though the store manager was unavailable for the hearing due to a "family emergency," the evidence indicates that the store manager was not part of the investigation or the discharge decision.

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

DECISION:

The claims deputy's July 30, 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css