

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

PAT J WILLIS

Claimant

APPEAL NO. 19A-UI-01996-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 02/03/19

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 25, 2019, reference 01, decision that held the claimant was eligible for benefits provided he met all other eligibility requirements and that employer's account could be charged for benefits, based on the Benefits Bureau deputy's conclusion that the claimant was discharged on January 17, 2019 for no disqualifying reason. After due notice was issued, a hearing was held on March 21, 2019. Claimant Pat Willis participated. Brandon Krutzfield represented the employer and presented additional testimony through Zontel McCann. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1 and 3 through 8 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.

ISSUES:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Pat Willis was employed by Casey's Marketing Company as a part-time convenience store clerk from May 2018 until January 17, 2019, when Store Manager Brandon Krutzfield discharged him from the employment. Mr. Krutzfield was Mr. Willis' immediate supervisor. Mr. Willis worked at the Casey's store on Broadway Street in Iowa City. Due to safety concerns related to the particular area and customer base, the employer stationed a security officer at that Casey's store during the evening hours. The final incident that triggered the discharge occurred on January 15, 2019. On that day, Mr. Willis asked a patron to leash his pit bull or pit bull mix dog a short distance away from the front door, rather than directly in front of the front door. Mr. Willis made the request out of concern for patrons whom he observed were intimidated by the presence of

the dog so close to the store entrance. In response to the request, the dog owner became belligerent and aggressive. The dog owner began to yell at Mr. Willis. The customer's rant included baseless and irrational allegations that Mr. Willis was racist. The customer threatened to have others harm Mr. Willis. During the rant, Mr. Willis struggled to get a word in edgewise. In the heat of the moment, Mr. Willis "barked" that the customer's allegations were ridiculous and absurd. Mr. Willis did not make a dog barking sound. Mr. Willis was in fear for his safety during the interaction with the customer. The customer left and returned. Upon the customer's return, Mr. Willis hid in a restroom out of fear. That same day, Mr. Willis requested to transfer to a different store out of concern for his safety. Mr. Krutzfield investigated the matter and collected statements. Mr. Krutzfield erroneously took Mr. Willis written reference to "barking" at the customer literally. The next most recent incident that factored in the discharge occurred in November 2018.

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).

The evidence in the record establishes a discharge for no disqualifying reason. The weight of the evidence establishes that Mr. Willis reasonably requested that the customer move the dog on January 15, 2019 and did so out of concern for other patrons disturbed by the presence of the intimidating and potentially dangerous dog. The dog-owning and mentally-disturbed customer overreacted in the extreme, became belligerent, and explicitly threatened Mr. Willis. The weight of the evidence fails to establish that Mr. Willis literally barked at the customer. Rather, in the heat of the moment, Mr. Willis had a lapse in judgment when faced with the customer’s yelling and wild accusations. Under the circumstance, Mr. Willis’ yelling at the customer that the customer’s allegations were ridiculous and absurd was not misconduct in connection with the employment. The evidence fails to establish a current act of misconduct. For that reason, the administrative law judge need not further consider the earlier matter. Mr. Willis is eligible for benefits, provided he is otherwise eligible. The employer’s account may be charged for benefits.

DECISION:

The February 25, 2019, reference 01, decision is affirmed. The claimant was discharged on January 17, 2019 for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer’s account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs