

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LEZLIE A MAHONEY**  
Claimant

**APPEAL NO. 10A-UI-09940-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEST LIBERTY FOODS LLC**  
Employer

**OC: 06/13/10**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Employer filed a timely appeal from a representative's decision dated July 12, 2010, reference 01, which held claimant eligible to receive unemployment insurance benefits based upon her separation from West Liberty Foods. After due notice, a telephone hearing was held on August 30, 2010. The claimant participated personally. The employer participate by Ms. Niki Bruno, Human Resource Generalist and Maria Bozaan, Human Resource Supervisor.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having considered the evidence in the record, finds: Lezlie Mahoney was employed by West Liberty Foods from July 17, 2006 until June 15, 2010 as a part-time market clerk. Ms. Mahoney was paid by the hour. Her immediate supervisor was Cindy Daufeldt.

Ms. Mahoney was discharged on June 15, 2010 based upon an incident that had taken place on June 8, 2010. At that time the claimant had requested that another worker go to the bank to obtain one dollar bills and five dollar bills to use as change in the company's retail market area. The claimant's immediate supervisor had received a copy of an email and had questioned Ms. Mahoney at length about the request.

The employer believed that based upon a spreadsheet that had been prepared by another employee the preceding night that the claimant should have adequate change in her cash drawer that morning. During the time that the telephone conversation between the claimant and her immediate supervisor was continuing the other employee had gone to the bank and returned with the necessary change.

Ms. Mahoney was summoned to the company offices at the end of the business day on June 8 and questioned further about an issue. The employer at that time also brought up her previous

service issue that had occurred approximately two months before when a customer had called to complain about Ms. Mahoney's demeanor. The claimant had not been willing to provide gift certificates to the caller as he had not demonstrated proper credentials for receiving the gift certificates and the claimant had thus declined to give the certificates to the individuals.

It is the employer's position that because the claimant declined an offer for training in additional customer service skills for previous conduct with the complaining caller and the claimant's inability to properly explain why she needed change on June 8 there were sufficient grounds for her discharge from employment.

### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes sufficient misconduct to warrant the denial of unemployment insurance benefits. It does not.

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 insurance benefits. Misconduct that may be serious enough to warrant a discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance 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).

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).

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 evidence in the record establishes that the employer made a decision to discharge Ms. Mahoney based upon a prior incident that had occurred approximately two months previously and because of an incident that occurred on June 8, 2010 when the claimant had requested assistance in getting change for the company store's cash drawer.

Based upon the employer's belief that sufficient change was available at the store, the employer believed that the request was not necessary. Ms. Mahoney testified under oath that the amount of change in a spreadsheet prepared by another employee the previous evening was not correct and the change in fact was needed in order to continue servicing customers that morning. The administrative law judge finds the claimant to be a credible witness and finds that her testimony is not inherently improbable.

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based upon a past act. The termination from employment must be based upon a current act. See 871 IAC 24.32(8). Allegations of misconduct some two months before the claimant's discharge do not relate to a current act of misconduct at or near the claimant's time of separation on June 15, 2010.

While the decision to terminate Ms. Mahoney may have been a sound decision from a management viewpoint, intentional misconduct sufficient to warrant the denial of unemployment insurance benefits has not been established. Benefits are allowed providing the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated July 12, 2010, reference 01, is affirmed. Claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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