

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CORINNE F DAMON
Claimant

APPEAL NO. 15A-UI-05312-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 04/19/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Corinne Damon filed a timely appeal from the May 1, 2015, reference 01, decision that disqualified her benefits. After due notice was issued, a hearing was held on June 8, 2015. Ms. Damon participated. Sherrill Wiley represented the employer.

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: Corinne Damon was employed by Wal-Mart from 2006 until April 20, 2015, when the employer discharged her from the employment. From December 2012 until the discharge, Ms. Damon was a full-time personnel manager.

The incident that was the sole basis of the discharge occurred on April 6, 2015, when Ms. Damon shared with a new employee that another applicant had not been hired because he had failed a pre-employment drug test. The new employee to whom Ms. Damon disclosed the drug test information to was the other applicant's grandfather. The employer's policy is to keep pre-employment drug test results confidential. The drug test result report indicates on its face that it contains confidential information. Ms. Damon was aware that she was to keep such information confidential. Ms. Damon disclosed the information to the applicant's grandfather during a casual conversation and in response to the grandfather's question regarding why it was taking so long to process his grandson's application.

The grandfather shared the drug test information with the mother of the applicant and the mother submitted a written complaint to company president on April 7, 2015. The company president forwarded the complaint to the home office. About a week after the mother of the

applicant filed the complaint, Sherrill Wiley, Market Human Resources Manager, and John Slauson, Store Manager, received the complaint.

On April 16, Ms. Wiley and Mr. Slauson met with Ms. Damon to discuss the disclosure of confidential information. Ms. Damon acknowledged that she had indeed shared the information, but at the time had not seen a problem with sharing the information in light of the familial relationship between the applicant and the newly hired employee. Ms. Damon acknowledged that she knew the duties of personnel manager required keeping all confidential employee and applicant information confidential.

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 evidence in the record establishes misconduct in connection with the employment, rather than a mere good faith error in judgment. Ms. Damon had been with the company for almost nine years and had been in the personnel manager position for 16 months at the time she elected to share the applicant's drug test results. Ms. Damon was fully aware that such information was confidential under the employer's policies and that it was her specific duty as personnel manager to maintain the confidentiality of such information. Ms. Damon's experience after the disclosure illustrates specifically why the employer's policy was reasonable and why her disclosure of the information represented a substantial violation of the standards of conduct that the employer reasonably expected of her.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Damon was discharged for misconduct. Accordingly, Ms. Damon 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.

DECISION:

The May 1, 2015, 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 shall not be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css