

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARVA G WASHINGTON
Claimant

APPEAL NO. 10A-UI-03436-M

**ADMINISTRATIVE LAW JUDGE
DECISION**

**DES MOINES INDEPENDENT
COMMUNITY SCHOOL DISTRICT**
Employer

**Original Claim: 02/07/10
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated February 26, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on April 20, 2010. Claimant participated personally and was represented by Katie Naset, Attorney at Law. Employer participated by Cathy McKay, Risk Manager. Exhibits A, B, C, One and Two were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: Claimant last worked for employer on October 5, 2010.

Claimant was discharged on February 5, 2010 by employer because claimant failed two accounting policies. Claimant had delayed depositing \$19,443.00 in checks. The checks were as old as six months. Claimant had over \$5,000.00 in cash at the time she was suspended on February 6, 2010. Claimant was required by written policy to deposit every five days or when the gross amount was up to \$1,000.00. Claimant was also required by written policy to stamp the back of each check: "pay to the order of." Claimant had failed to stamp all the checks. Claimant's office was moved and claimant was without a computer for a month. Claimant also lost her full-time clerk, who helped with the accounting. Claimant complained to her supervisor, Dr. Lewis, multiple times over several months asking for help. Claimant told Dr. Lewis that she had a large amount of money left for deposit. Claimant asked for help at least ten times. The employer promised help that never came. Claimant had no warnings on her record. Claimant was aware of the policies and procedures for depositing and endorsing checks.

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.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. 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 on such past act or acts. The termination of employment must be based on a current act.

871 IAC 24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. 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. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The gravity of the incident, number of policy violations, and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning bank deposits and endorsements. Claimant was not warned concerning this policy. Where conflicts exist in the testimony, the sworn statements of claimant are found more credible than the hearsay offered by employer.

The last incident, which brought about the discharge, fails to constitute misconduct because claimant was doing the job to the best of her ability. Claimant lost her clerk and was so very short-handed that it was impossible for her to timely complete the tasks. Since claimant repeatedly warned her supervisor that there was a lot of money un-deposited and no action was taken by employer, this is not carelessness by claimant. It is the employer that was carelessness in not offering claimant additional help when repeatedly warned that she was horribly behind. No intentional policy violation or carelessness has been established on the part of claimant. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated February 26, 2010, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/kjw