

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERESA M HOLBROOK
Claimant

APPEAL NO. 14A-UI-03433-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SIOUX CITY COMMUNITY SCHOOL DIST
Employer

OC: 03/02/14
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Teresa Holbrook filed a timely appeal from the March 21, 2014, reference 01, decision that disqualified her for benefits. After due notice was issued, a hearing was held on April 22, 2014. Ms. Holbrook participated. Debbi Douma-Heeren, Assistant Director of Human Resources, represented the employer. Exhibits One through Seven were received into evidence.

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: Teresa Holbrook was employed by the Sioux City Community School District as a part-time food service employee from 2011 until March 3, 2014, when the employer discharged her from the employment. From August 2013, Ms. Holbrook was assigned to Riverside Elementary. Ms. Holbrook's supervisor at Riverside Elementary was Principal Mary Motz.

The final incident that triggered the discharge concerned an allegation that Ms. Holbrook had on February 26, 2014, slapped the hand of elementary student when that student had raised her hand to ask a question or otherwise speak. The child's parent contacted Principal Motz on February 26, 2014 to complain about the alleged incident. Principal Motz spoke to the student on February 27, 2014. On that same day, Principal Motz spoke to Ms. Holbrook about the alleged incident. Ms. Holbrook denied knowledge of any such incident. Ms. Holbrook was surprised to hear of the allegation and had a good rapport with the student in question. Principal Motz directed Ms. Holbrook to talk to the student. Ms. Holbrook immediately spoke to the student. Principal Motz asked Ms. Holbrook whether she had apologized to the student and Ms. Holbrook indicated she had not and did not know what she was supposed to apologize for. Ms. Holbrook returned to the student and the student hugged Ms. Holbrook.

On March 3, 2014, Principal Motz notified Ms. Holbrook that the District was terminating Ms. Holbrook's employment due to alleged "unsatisfactory performance and the no

improvements on the issues outlined in the letters..." The next most recent reprimand that had factored in the discharge was issued on December 12, 2013. Unbeknownst to Ms. Holbrook, Principal Motz had at some point prior to the discharge prepared an evaluation sheet concerning Ms. Holbrook and had alleged in that document that students complained about Ms. Holbrook's demeanor. The evaluation sheet was not reviewed with Ms. Holbrook prior to the discharge.

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.

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 has presented insufficient evidence, and insufficiently direct and satisfactory evidence to establish misconduct in connection with the employment that would disqualify Ms. Holbrook for unemployment insurance benefits. The employer did not provide testimony from anyone with personal knowledge of the final incident or prior incidents that factored in the discharge. The employer had the ability to present testimony from Principal Motz and others with personal knowledge, but elected not to present such testimony. The weight of the evidence in the record fails to establish, by a preponderance of the evidence, that Ms. Holbrook slapped or otherwise mistreated a student on or about February 26, 2014. In the absence of sufficient proof to establish misconduct in connection with the final incident that triggered the discharge, the evidence fails to establish a current act of misconduct upon which a disqualification for benefits might be based. In the absence of a current act of misconduct, the administrative law judge need not consider the prior alleged acts.

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

DECISION:

The claims deputy's March 21, 2014, reference 01, decision is reversed. 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