

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ABIGAIL K DOSSEY
Claimant

CASEY'S MARKETING COMPANY
Employer

APPEAL NO. 21A-UI-24971-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/19/21
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant, Abigail Dossey, filed a timely appeal from the November 1, 2021, reference 01, decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant was discharged on September 21, 2021 for failure to follow instructions in the performance of her job. After due notice was issued, a hearing was held on January 7, 2021. The claimant participated. The employer did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Exhibit A, the online appeal, was received into evidence at the time of the hearing. The claimant waived formal 10-day notice of the hearing. In light of the claimant not receiving the complete hearing notice in a timely manner, the administrative law judge left the hearing record to the end of the hearing date for the limited purpose of allowing the claimant to submit exhibits. The claimant submitted materials that were received into the hearing record collectively as Exhibit B.

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:

The claimant was employed by Casey's Marketing Company as the full-time Store Manager for the Casey's store in Cascade from 2009 until September 21, 2021, when Michelle McCrea, Area Supervisor, discharge from the employment. Ms. McCrea was the claimant's supervisor during the final year of the employment. At the time of discharge, Ms. McCrea referenced as the basis for the discharge the claimant's failure to use an automated scheduling system to generate the work schedule at the Cascade store. The company had introduced the scheduling system to the claimant and other store managers toward the beginning of 2021 and had implemented use of the scheduling during the summer of 2021. The employer provided minimal training in how to use the system. The claimant requested additional training, but Mr. McCrea told the claimant she was a seasoned employee and should be able to figure it out on her own.

The automated scheduling system only worked if the store was fully staffed. Otherwise, the automated system left illogical gaps in store coverage, including no coverage at times when the store was required to remain open. From the beginning of the COVID-19 pandemic, the Cascade store had been chronically understaffed despite the claimant's efforts to recruit new employees. This meant that the claimant and other employees had to work additional hours, including those gap periods created by the automated scheduling system. Before the employer implemented the automated scheduling system, the claimant had been required to prepare a work schedule and enter that schedule into the computer. Given the problems with using the automated scheduling system, and the need to ensure appropriate coverage, the claimant continued to use the old system to generate a work schedule. Prior to discharging the claimant from the employment, the employer had given the claimant no warning that her employment was in jeopardy due to the claimant not using the automated scheduling system to the employer's satisfaction.

The discharge followed within a few days after the claimant participated in a conference call meeting over which Ms. McCrea presided. During the call, Ms. McCrea instructed the store managers to commence preparing 16 additional food items each morning. During the call, the claimant asserted it was impossible to meet that expectation in light of the number of items her store already had to prepare on a daily basis and in light of the staffing shortage. The claimant asked Ms. McCrea to come to her store to show her how it was possible to prepare the additional items within the time and staffing restraints. Ms. McCrea directed the claimant to remove the word can't from her vocabulary and just do it. On September 21, 2021, a few days after the meeting, Ms. McCrea appeared at the Cascade store with another Area Supervisor and with an employee to replace the claimant as Store Manager. Ms. McCrea discharged the claimant and installed the other employee as Store Manager.

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 Iowa Administrative Code rule 871-24.32(4).

Continued failure to follow reasonable instructions constitutes misconduct. See *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985).

The evidence in the record establishes a discharge for no disqualifying reason. The employer did not participate in the appeal hearing and did not present any evidence to meet its burden of proving, by a preponderance of the evidence, a discharge based on misconduct in connection with the employment. The employer presented no evidence to rebut the claimant's testimony.

The employer presented no evidence to establish it was possible for the claimant to use the automated scheduling system to generate her store's work schedule in the context of staffing issues and limitations in the automated scheduling program. In other words, the employer presented no evidence to establish a directive to use the automated scheduling system was reasonable under the circumstances. The employer presented no evidence to establish the claimant's use of the previous scheduling system was unreasonable under the circumstances.

The evidence in the record establishes that the claimant's utterances at the meeting a few days before her discharge may have factored into the discharge. The claimant was concerned that the employer was adding significantly to the claimant's workload at a time when the claimant's store was understaffed. The employer presented no evidence to establish the directive was reasonable under the circumstances. The employer presented no evidence to establish the claimant refused the directive or that a refusal would have been unreasonable under the circumstances.

The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The November 1, 2021, reference 01, decision is reversed. The claimant was discharged on September 21, 2021 for no disqualifying reason. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.



James E. Timberland
Administrative Law Judge

February 1, 2022
Decision Dated and Mailed

jet/mh