

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

CAROL A MCPHAIL
8604 CAROLE CIRCLE APT 4
URBANDALE IA 50322

QUALITY FORD/WEST DES MOINES INC
PO BOX 66040
WEST DES MOINES IA 50265

Appeal Number: 05A-UI-05832-JT
OC: 05/08/05 R: 02
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

Carol McPhail filed a timely appeal from the May 23, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on June 27, 2005. Ms. McPhail participated and presented additional testimony through receptionist Donna Steele.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Carol McPhail was employed by Quality Ford as a full-time salesperson from October 21, 2002, until May 5, 2005, when Sales Manager Benny Green and New Car Manager Ryan Gerkee discharged her for allegedly consuming alcohol during work hours.

On May 5, 2005, Ms. McPhail commenced her workday at 8:00 a.m. At approximately 6:00 p.m., Ms. McPhail was not feeling well, due to an upset stomach. Ms. McPhail attempted to locate a member of the finance department to alert them that she was not feeling well, but was unsuccessful. Ms. McPhail advised salesperson Kevin Ades she was not feeling well and Mr. Ades suggested that she rest for a while in her vehicle. Ms. McPhail took her cell phone with her and asked Mr. Ades to call her if she was needed in the showroom. Due to the long hours the salespeople worked, it was not uncommon at the dealership for a salesperson to take a nap in his or her vehicle during work hours. Other salespeople had, on occasion, advised the part-time receptionist that they would be away from the showroom for two to three hours while they napped in their vehicle.

At approximately 6:15 p.m., Ms. McPhail was contacted at her vehicle and summoned to a meeting with Executive Assistant Deborah Ransford and Finance Manager Duane Hill. Ms. Ransford advised Ms. McPhail that the employer suspected she had been consuming alcohol during work hours at the restaurant next to the dealership. Ms. McPhail denied having done so and refused to sign a written reprimand acknowledging the employer's allegation that she had been drinking. Ms. McPhail was then discharged for consuming alcohol during work hours.

Subsequent to the discharge, the employer amended the basis for the discharge to sleeping during working hours. Ms. McPhail had received a reprimand in February 2005 for allegedly sleeping at her desk during work hours. Ms. McPhail asserts that she had only closed her eyes for a moment, after a long day of moving vehicles from the employer's old location to the new location, and was not in fact sleeping at her desk.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. McPhail was discharged for misconduct in connection with her employment. It does not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

Since the claimant was discharged, 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 or acts. The termination of employment must be based on a current act. See 871 IAC 24.32(8).

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).

The employer failed to appear for the hearing, and, therefore, failed to introduce any evidence into the record. The evidence establishes an allegation of misconduct, but fails to substantiate that allegation. See 871 IAC 24.32(4). The evidence in the record fails to establish a "current act" of misconduct. See 871 IAC 24.32(8). Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. McPhail was discharged for no disqualifying reason. Accordingly, Ms. McPhail is eligible for benefits, provided she meets all other eligibility requirements.

DECISION:

The Agency representative's decision dated May 23, 2005, reference 01, is reversed. The claimant was discharged from the employment for no disqualifying reason. The claimant is eligible for benefits, provided she meets all other eligibility requirements.

jt/kjw