

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GAIL L LOEFFLER
Claimant

APPEAL NO. 17A-UI-01487-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SHIVE-HATTERY GROUP INC
Employer

OC: 01/15/17
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Gail Loeffler filed a timely appeal from the February 6, 2017, reference 01, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on the claims deputy's conclusion that Ms. Loeffler had voluntarily quit on January 17, 2017 without good cause attributable to the employer. After due notice was issued, a hearing was held on March 1, 2017. Ms. Loeffler participated. The employer did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate in the hearing. Exhibits A and B were received into evidence.

ISSUE:

Whether Ms. Loeffler separated from the employment for a reason that disqualified her for unemployment insurance benefits or that relieves the employer of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Gail Loeffler was employed by Shive-Hattery Group, Inc. as a full-time mechanical designer from 2007 until January 17, 2017, when the employer discharged her from the employment for purportedly being too difficult to work with. Ms. Loeffler asked for a more specific reason for the discharge, but did not receive one.

Ms. Loeffler established a claim for unemployment insurance benefits that was effective the week that started January 15, 2017. When Ms. Loeffler made her online application for benefits, she erroneously indicated that she had quit the employment. Ms. Loeffler did not voluntarily quit the employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 that Ms. Loeffler was discharged on January 17, 2017 for no disqualifying reason. The employer did not participate in the appeal hearing and did not present any evidence to support the notion that Ms. Loeffler was discharged for misconduct in connection with the employment. The evidence in the record fails to establish misconduct.

Because the administrative law judge concludes that Ms. Loeffler was discharged for no disqualifying reason, she is eligible for benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to Ms. Loeffler.

The administrative law judge notes in the Workforce Development administrative records that Ms. Loeffler has not filed any weekly claims since establishing her original claim for benefits. Benefits cannot be paid for weeks for which no weekly claim has been filed. See Iowa Administrative Code rule 871-24.2(1)(g). In addition, because Ms. Loeffler has made no weekly claims, the underlying claim has lapsed. Accordingly, Ms. Loeffler must reactivate her claim for benefits online before she can commence making weekly claims.

DECISION:

The February 6, 2017, reference 01, decision is reversed. The claimant was discharged on January 17, 2017 for no disqualifying reason. The claimant is eligible for benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs