

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**MATTHEW J COFFIN**  
Claimant

**APPEAL NO. 20A-UI-02905-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COMES INVESTMENTS INC**  
Employer

**OC: 03/01/20**  
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the April 6, 2020, reference 01, decision that allowed benefits to the claimant provided he met all other eligibility requirements and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on March 3, 2020 for no disqualifying reason. After due notice was issued, a hearing was held on May 5, 2020. Claimant Matthew Coffin participated. Mark Hauder represented the employer and presented additional testimony through Mary Stoos. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant (DBRO and KPYX) and received Exhibits 1 through 5 into evidence. The parties waived formal notice on the issue of whether the claimant was overpaid Federal Pandemic Unemployment Compensation benefits.

**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: Matthew Coffin was employed by Comes Investments, Inc., doing business as Pizza Hut, as a part-time Shift Lead from November 2018 until March 3, 2020, when Renee Kain, Restaurant General Manager, and Chad Blair, Area Coach, discharged him from the employment. Ms. Kain was Mr. Coffin's immediate supervisor. The final incident that triggered the discharge was Mr. Coffin's alleged failure to lock the back door of the employer's Winterset restaurant when he closed the restaurant on February 27, 2020. Mr. Coffin denies that he failed to secure the back door when he closed the restaurant on February 27, 2020. It was Mr. Coffin's daily practice to walk the outside perimeter of the building to check doors and ensure they are locked before he left for the evening. The employer allows a supplies vendor, McLane, to have overnight access to the restaurant for the purpose of making overnight deliveries. The vendor driver has a master key to the restaurant. The McLane notified Ms. Kain that the back door of the restaurant was unlocked when the driver arrived during the overnight hours of February 27-28, 2020. Ms. Kain

said nothing to Mr. Coffin about the alleged failure to secure the back door until March 3, 2020, when she notified him that he was discharged from the employment.

The employer considered earlier conduct and concerns when making the decision to discharge Mr. Coffin from the employment. The next most recent concern that factored in the discharge occurred during the period of November 27 and November 29, 2019. On November 27, 2019, Mark Hauder, Vice President of Operations directed Mr. Coffin to complete three tasks before he left for the evening so that the restaurant would be ready for business on November 29, 2019, the day after the Thanksgiving holiday. Mr. Hauder directed Mr. Coffin to mix pizza sauce, to ensure the restroom was cleaned, and to “prep” dough. Mr. Hauder had put pizza sauce in a bucket. Mr. Coffin did not mix the pizza sauce because the pre-made pizza sauce is not ordinarily mixed with water or any other liquid. Mr. Coffin directed a food server to clean the restroom and believed the restroom to be clean at the time he left for the evening. Mr. Coffin “prepped” the dough that was on hand, but did not have enough dough in stock to fulfill the restaurant’s needs for the entirety of the next business day. “Prepping” the dough would entail placing individual frozen disks of dough on oiled pans so that it could thaw and rise before the next business day. The employer also considered a May 2019 incident wherein the franchisee found some closing cleaning tasks undone when arrived at the business on the morning in question. The employer considered two earlier incidents wherein Mr. Coffin made an error in calculating an employee’s discount on a purchase and an incident wherein a secret shopper alleged that Mr. Coffin had eaten food without paying for it. The employer issued written reprimands in response to all but the November 2019 incident.

#### **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 871 IAC 24.32(4).

The evidence in the record establishes a discharge for no disqualifying reason. The employer presented insufficient evidence to rebut Mr. Coffin's testimony that he did not in fact leave the back door unlocked on February 27, 2020. In the absence of sufficient evidence to prove, by a preponderance of the evidence, that Mr. Coffin did indeed leave the door unlocked on February 27, 2020, the evidence fails to establish a current act of misconduct. In the absence of proof of a current act of misconduct, the administrative law judge concludes the discharge was for no disqualifying reason. In the absence of proof of a current act of misconduct, the administrative law judge need not consider the earlier concerns, none of which was a current act within the meaning of the law. Mr. Coffin is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged.

**DECISION:**

The April 6, 2020, reference 01, decision is affirmed. The claimant was discharged on March 3, 2020 for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

A rectangular box containing a handwritten signature in cursive script that reads "James E. Timberland".

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James E. Timberland  
Administrative Law Judge

May 15, 2020  
Decision Dated and Mailed

jet/scn