

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

DAWN A STOUT
Claimant

APPEAL NO. 19A-UI-03664-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BURLINGTON COMMUNITY SCHOOL DIST
Employer

OC: 04/07/19
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Dawn Stout filed a timely appeal from the April 23, 2019, reference 01, decision that held she was disqualified for benefits and the employer's account would not be charged for benefits, based on the deputy's conclusion that Ms. Stout was discharged on April 9, 2019 for conduct not in the best interest of the employer. After due notice was issued, a hearing was held on May 23, 2019. Ms. Stout participated personally and was represented by attorney Curtis Dial. Laci Johnson represented the employer and presented additional testimony through Stacy Hatten.

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: Dawn Stout was employed by the Burlington Community School District as a full-time Level 1 Special Education Associate from 2015 until April 9, 2019, when the employer discharged her from the employment for assaulting a student. Ms. Stout's duties included supervising students during study hall. On April 5, 2019, Ms. Stout got into a verbal dispute with a sixth-grade boy and decided to escalate the interaction by grabbing the Chromebook the boy had been using. The boy attempted to grab the Chromebook back. Ms. Stout turned and hit the child with a closed fist. The child continued his attempts to regain the Chromebook, swung at Ms. Stout, and missed. As Ms. Stout continued to engage with the boy and prolong the interaction, she grabbed the student by the neck and left marks on the student's neck. None of Ms. Stout's contribution to the altercation was in self-defense. An associate principal heard the commotion in the study hall. Soon the principal arrived, assumed the child was at fault, and escorted the student to a time-out room. The school administration learned through interviewing the student that there had been assaultive behavior. The school administration had students in the study hall prepare written statements. The employer retrieved surveillance video that showed Ms. Stout escalating the exchange and assaulting the child. The employer summoned Ms. Stout to a meeting at which Ms. Stout asserted she had not hit the child. The employer

then played the relevant portion of the surveillance record for Ms. Stout to view and told Ms. Stout the employer had obtained statements from other students. Ms. Stout replied that the employer might as well fire her there and then. The employer suspended Ms. Stout from the employment and subsequently discharged her on April 9, 2019. Ms. Stout violated district policy that required her to ensure the safety of students and treat students with courtesy and respect.

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).

An employee who engages in a physical altercation in the workplace, regardless of whether the employee struck the first blow, engages in misconduct where the employee’s actions are not in self-defense or the employee failed to retreat from the physical altercation. See *Savage v. Employment Appeal Board*, 529 N.W.2d 640 (Iowa App. 1995).

The evidence in the record establishes a discharge for misconduct in connection with the employment. Ms. Stout acted with willful and wanton disregard for the employer and for the students under her supervision when she elected to escalate a verbal exchange with the 11 or 12-year-old child and assaulted the child. Ms. Stout’s assertion that her actions were in self-defense is without merit. One cannot claim self-defense when one initiates the assaultive behavior. The weight of evidence establishes that Ms. Stout had multiple opportunities to retreat and/or de-escalate, but elected to prolong the interaction and engage in additional assaultive behavior. Ms. Stout is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. Ms. Stout must meet all other eligibility requirements. The employer’s account shall not be charged for benefits.

DECISION:

The April 23, 2019, reference 01, decision is affirmed. The claimant was discharged on April 9, 2019 for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer’s account shall not be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs