

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JODI L ADKINS**  
Claimant

**APPEAL NO. 10A-UI-08437-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CRYSTAL PROPERTIES INC**  
**GENESIS SENIOR LIVING CENTER**  
Employer

**OC: 05/02/10**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Jodi Adkins filed a timely appeal from the June 7, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 29, 2010. Ms. Adkins participated and presented additional testimony through Dustin Gilmore. Tiffany Roberts, Business Office Manager, represented the employer and presented additional testimony through Brandon Skidgel, Dietary Cook.

**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: Jodi Adkins was employed by Crystal Properties, Inc., as a full-time cook from 2007 until May 4, 2010, when Inde Miller, Administrator, discharged her from the employment for theft. Darcy Otto, Certified Dietary Manager, was Ms. Adkins' immediate supervisor. Ms. Adkins' daughter, Jamie, and Ms. Adkins' son also worked for the employer. Dustin Gilmore, a dietary aid/relief cook was Ms. Adkins' friend, coworker, and boyfriend to Ms. Adkins' daughter. Ms. Adkins provided Mr. Gilmore and others with a ride to and from work.

On May 2, 2010, Brandon Skidgel, Dietary Cook, witnessed Mr. Gilmore take three five-pound bags of chicken wings from the employer's kitchen and place them in Ms. Adkins' car. Mr. Skidgel is Mr. Gilmore's cousin and the son of Darcy Otto, Certified Dietary Manager. Mr. Gilmore accessed the trunk of Ms. Adkins' car through the back seat and placed the chicken in the trunk. Ms. Adkins was standing by watching as Mr. Gilmore took the chicken and placed it in her car. Ms. Adkins then transported Mr. Gilmore and others home in the car, aware that she was also transporting the stolen chicken.

## REASONING AND CONCLUSIONS OF LAW:

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.

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 weight of the evidence in the record establishes that Ms. Adkins knowingly and intentionally conspired with Mr. Gilmore in the theft of 15 pounds of food from the employer on May 2, 2010. The weight of the evidence fails to support Ms. Adkins' assertion that the discharge was based on animosity between herself and others regarding favoritism in the workplace. Having listened carefully to all of the testimony, the administrative law judge concluded that Mr. Skidgel's testimony was candid and credible. There was no hint of ill-will toward Ms. Adkins in Mr. Skidgel's testimony. On the other hand, the testimony from Mr. Gilmore was that of an admitted thief, which by itself provides ample reason to discount Mr. Gilmore's assertion that Ms. Adkins was ignorant of the theft. The weight of the evidence makes Ms. Adkins' version of events highly implausible.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Adkins was discharged for misconduct. Accordingly, Ms. Adkins is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Adkins.

**DECISION:**

The Agency representative's June 7, 2010, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements. The employer's account will not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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