

**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**

**SHERYL L DJUREEN
1400 GREENBRIAR
BLDG 4 APT 105
COUNCIL BLUFFS IA 51503**

**TRADE SECRET INC
TRADE SECRETS #7756
c/o EMPLOYERS UNITY
PO BOX 749000
ARVADA CO 80006-9000**

**Appeal Number: 05A-UI-07464-JTT
OC: 06/19/05 R: 01
Claimant: Respondent (1)**

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:

Trade Secret filed a timely appeal from the July 13, 2005, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on August 8, 2005. Sheryl Djureen participated. Kevin Rafferty of Employer's Unity represented the employer and presented testimony through Manager Marcie Bergantzel and Area Supervisor Noreen Ramedon.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Sheryl Djureen was employed by Trade Secret as a full-time stylist from December 17, 2002 until June 22, 2005, when Manager Marcie Bergantzel and Area Supervisor Noreen Ramedon discharged her for misconduct.

The final incident that prompted the discharge occurred on June 18, 2005. On that date, Ms. Bergantzel looked in a drawer of Ms. Djureen's workstation and noticed that Ms. Djureen's combs and brushes had not been sufficiently cleaned to be considered sanitary. Ms. Bergantzel placed the items on top of Ms. Djureen's workstation. When Ms. Djureen arrived for work and took a client back to her workstation, the client remarked that the workstation appeared to have been "sabotaged." Ms. Bergantzel arrived at Ms. Djureen's workstation and a discussion took place in front of the customer regarding whether Ms. Djureen's combs and brushes were sanitary. Ms. Djureen insisted the items were sanitary. On June 19, 2005, someone at the salon noticed that Ms. Djureen was wearing a color of slacks that deviated from the official dress code. The non-conforming clothing was referenced at the time of the discharge.

On March 23, 2005, Area Supervisor Noreen Ramedon had issued a written reprimand to Ms. Djureen for insufficiently cleaning her brushes and combs. Ms. Bergantzel had been on a leave of absence from the end of February to the beginning of April of 2005. On February 20, 2005, Ms. Ramedon had issued a reprimand to Ms. Djureen after a customer complained of rude treatment. The customer was a young lady who had arrived at the salon with insufficient funds to pay for the "cut and color" she wanted and was unhappy with Ms. Djureen's handling of the situation. Ms. Djureen was the second stylist in the salon to refuse to perform the requested services in the absence of the customer's ability to pay.

Within a few days prior to being discharged, Ms. Djureen had discussed with Ms. Bergantzel her desire to update her appearance. Ms. Djureen was older than her manager and coworkers, who made a point of sharing with Ms. Djureen that they thought Ms. Djureen's appearance, specifically her hair length and color, were out-dated. Within a few days prior to being discharged, Ms. Djureen allowed Ms. Bergantzel to cut and color her hair. However, Ms. Djureen did not like the result and dyed her hair back to her previous color. Ms. Djureen was concerned at the time that Ms. Bergantzel would be offended that Ms. Djureen did not care for the look Ms. Bergantzel had bestowed upon her. Ms. Djureen felt the discharge was motivated by the situation with her hair cut and color more so than the cleanliness of her combs and brushes.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Djureen 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).

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 to 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).

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 fails to establish that any negligence or carelessness on the part of Ms. Djureen in cleaning her brushes and combs or deviating from the dress code were not so recurrent that it indicated a willful or wanton disregard of the interests of the employer. In addition, while the employer was within its rights to discharge Ms. Djureen, the conduct upon which the discharge was based was not sufficiently substantial to warrant a denial of unemployment insurance benefits.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Djureen was discharged for no disqualifying reason. Accordingly, Ms. Djureen is eligible for benefits, provided she is otherwise eligible.

DECISION:

The Agency representative's decision dated July 13, 2005, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Accordingly, the claimant is eligible for benefits, provided she is otherwise eligible.

jt/tjc