

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JENNIFER L MORRIS
Claimant

CASEY'S MARKETING COMPANY
Employer

APPEAL NO. 21A-UI-11457-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/21/21
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 26, 2021, reference 01, decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant was discharged on June 5, 2020 for misconduct in connection with the employment. After due notice was issued, a hearing was held on July 12, 2021. Claimant participated. The employer provided written notice that the employer waived participation in the appeal hearing. Exhibit A was received into evidence.

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: The claimant was employed by Casey's Marketing Company as a part-time cashier at the Donnellson Casey's store until June 4, 2020, when the employer discharged her from the employment. The claimant worked the overnight shift, from 10:00 p.m. to 5:00 a.m. About a week before the employment ended, the claimant was confronted with a belligerent aggressive customer who was upset that his pizza was not made to his satisfaction. About 30 minutes earlier, the customer's significant other had purchased the pizza. When the belligerent customer brought the pizza back, he threw it at the claimant and began yelling at the claimant. The claimant attempted to maintain a polite, friendly professional demeanor. The customer said, "What are you smiling at you fat bitch?" The customer moved toward the claimant in an aggressive manner, which prompted another regular customer to step in between the customer and the claimant. The claimant directed the customer to leave the store. The claimant denies that she used any profanity during the interaction. The claimant felt threatened during the incident. After the belligerent customer left the store, the claimant had the previously purchased, but rejected pizza in hand. The claimant asked the regular customer who had intervened whether he wanted to feed the pizza to his dog. The customer accepted the pizza and departed from the workplace. When the claimant reported for work the following Monday, her supervisor discussed the matter with the claimant and assured the claimant she would not

be discharged in connection with the incident. The claimant was next scheduled to work the following Friday. On that, the employer notified the claimant that she was being discharged for giving away the pizza.

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 Iowa Administrative Code rule 871-24.32(4).

The evidence in the record establishes a discharge for no disqualifying reason. The employer waived participation in the appeal hearing and did not present any evidence to meet its burden of proving, by a preponderance of the evidence, a discharge for misconduct in connection with the employment. The employer did not present any evidence to rebut the claimant's testimony. The claimant was verbally abused and physically threatened by a belligerent, aggressive customer. The employer presented no evidence to prove that the claimant acted inappropriately in dealing with the difficult customer. In the heat of the moment, the claimant made an error in judgment by offering the previously purchased pizza to another customer for his dog to consume. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The April 26, 2021, reference 01, decision is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.



James E. Timberland
Administrative Law Judge

July 23, 2021
Decision Dated and Mailed

jet/scn