

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

AMBER L FROMMELT
Claimant

APPEAL NO. 15A-UI-06341-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LENSCRAFTERS INC
Employer

OC: 05/10/15
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Lenscrafters Inc. filed a timely appeal from a representative's decision dated May 22, 2015, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on July 13, 2015. The claimant participated. The employer participated by Ms. Michelle Hawkins, Hearing Representative and witness, Ms. Donna Fuller, General Manager.

ISSUE:

The issue in this matter is whether the claimant was discharged for a current act of misconduct.

FINDINGS OF FACT:

Having considered all the evidence in the record, the administrative law judge finds: Amber Frommelt was employed by Lenscrafters Inc. from February 14, 2010 until May 5, 2015, when she was discharged from employment. Ms. Frommelt was employed as a full-time laboratory technician/key holder and was paid by the hour. Her immediate supervisor was Ms. Donna Fuller.

Ms. Frommelt was discharged on May 5, 2015, because of an attendance infraction that had taken place on April 9, 2015. On April 9, the claimant was to open the employer's facility at 10:30 a.m., but overslept when her alarm clock malfunctioned. Ms. Frommelt reported to work that day at 1:21 p.m. The facility's general manager, Ms. Fuller, was out of town at the time of the incident. When Ms. Fuller returned, she was informed of the claimant's most recent attendance infraction and referred the matter to the company's human resource department for determination as to whether Ms. Frommelt should be discharged from employment. Ms. Frommelt had received one informal warning on August 15, 2014 and two written warnings, one on November 22, 2014 and most recently on April 4, 2015. After investigating and considering the matter, the company's human resource department confirmed that a decision had been made to discharge Ms. Frommelt from employment on May 5, 2015 and the claimant was discharged.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant was discharged for a current act of misconduct. 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.

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 to establish disqualifying conduct on the part of a claimant. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant a denial of unemployment insurance 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 a current act of misconduct, a discharge for misconduct cannot be based upon such past acts. The termination of employment must be based upon a current act. See 871 IAC 24.32(8).

In the case at hand, the evidence in the record establishes that the most recent attendance infraction that caused the claimant's discharge took place on April 9, 2015. The information about the claimant's final attendance infraction was initially delayed because the general manager was out of town, but then further delayed by an internal review by the company's human resource department.

Although it is understandable that some delay might occur, the delay in discharging the claimant between the time of the most recent incident and the date of the claimant's termination was excessive. The administrative law judge thus concludes that the claimant was not discharged for a current act of misconduct. Benefits are allowed providing the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated May 22, 2015, reference 01, is affirmed. The claimant's discharge from employment on May 5, 2015 was not for a current act of misconduct. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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