

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL A PATTERSON
Claimant

APPEAL NO. 11A-UI-06279-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**"THOMAS L CARDELLA & ASSOCIATES
INC**
Employer

**OC: 04/10/11
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Employer filed a timely appeal from a representative's decision dated May 3, 2011, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice a telephone hearing was held on July 27, 2011. Claimant provided a telephone number for the hearing. Employer participated by Mr. Tom Kuiper, Hearing Representative, and witness, Ms. Lynn Zinnel, Human Resource Manager. Employer's Exhibits One and Two were received into evidence.

ISSUE:

The issue is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Michael Patterson was employed by Thomas L. Cardella & Associates from January 19, 2009 until April 12, 2011 when he was discharged from employment. Mr. Patterson worked as a call center telephone service representative and was paid by the hour.

The claimant was discharged based upon a complaint from a company client regarding Mr. Patterson's conduct in attempting to return purchased merchandise to the client while Mr. Patterson was off duty during non working hours. The client reported that Mr. Patterson had "scowled" at employees and remained in the store after his attempt to return merchandise to the client had been denied. During that time another employee who had accompanied Mr. Patterson was shopping at the store and Mr. Patterson was waiting for the other worker as the two had driven to the client company's store together. Because Mr. Patterson had previously been warned for unprofessional behavior, a management decision was made to terminate the claimant from employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is not.

Iowa Code § 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 § 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 is not necessarily 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. of Appeals 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).

Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. If the employer is unable to furnish sufficient 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 Department of Public Safety, 240 N.W.2d 682 (Iowa 1976).

In this matter Thomas L. Cardella & Associates made a management decision to terminate Michael Patterson based upon the hearsay allegation of a client that Mr. Patterson had acted inappropriately while attempting to return merchandise that he had purchased from the client at a previous time. The client complained to Thomas L. Cardella & Associates that Mr. Patterson had "scowled" and had remained in the store after the client had refused to issue him a refund. The evidence establishes the claimant remained in the store because he was waiting for another Thomas L. Cardella & Associates employee who was shopping in the store because the two had ridden together to the facility and Mr. Patterson was waiting for his ride to finish shopping.

The administrative law judge does not find a sufficient nexus or connection between the claimant's off duty conduct and his employment with Thomas L. Cardella & Associates. The employer's hearsay evidence that the claimant scowled and waited in the client company sales area does not establish sufficient misconduct to warrant the denial of unemployment insurance benefits.

The question is not whether the employer has a right to discharge Mr. Patterson for these reasons but whether the discharge is disqualifying under the provisions of the Iowa Employment Security Law. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, the evidence in the record is not sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed, providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated May 3, 2011, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs