

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

ANNA M BIGLEY  
504 – 10<sup>TH</sup> AVE SW  
MOUNT VERNON IA 52314-1023

DILLARD DEPARTMENT STORES INC  
ATTN MS BILLIE TREAT  
1600 CANTRELL RD  
LITTLE ROCK AR 72201-1110

Appeal Number: 06A-UI-04202-JTT  
OC: 03/12/06 R: 03  
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:

Dillard Department Stores filed a timely appeal from the April 6, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 3, 2006. Claimant Anna Bigley participated. Nick Carroll, Assistant Store Manager of the Coralville Store, represented the employer. Exhibits A and C were received into evidence. Though notice of the hearing was issued on April 19, the employer submitted proposed exhibits too close to the time of hearing for the claimant to receive and review a copy of the documents prior to the hearing. Accordingly, the employer's proposed exhibits were not received into the record.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Anna Bigley was employed by Dillard Department Stores on a full-time basis at the employer's

Coralville store from March 22, 2004 until March 11, 2006, when Store Manager Debbie Fowler discharged her.

The final incident that prompted the discharge is alleged to have occurred on March 11. The employer asserts that Ms. Bigley clocked in employee Jessica Meinders at 10:45 a.m. by means of the employer's computerized time-reporting system. On the day in question, Ms. Meinders had called in an absence based on her desire to be with her aunt, Judy Swanson, who was in the hospital. Home Department Manager Chelsea Bryant spoke with Ms. Meinders when she called in the absence. Ms. Bryant told Ms. Meinders that the home department was short-staffed and that her absence could impact her future employment. Ms. Meinders and her aunt both worked in the home department at Dillard. Ms. Bigley had recently transferred out of the home department. Though Ms. Bigley knew Ms. Swanson well, she did not know Ms. Meinders well. Ms. Meinders had only worked in the home department a few months prior to Ms. Bigley's transfer out of that department. While Ms. Bigley was a full-time employee, Ms. Meinders was a part-time employee and the two women did not generally work the same hours. Ms. Bigley did not have a relationship with Ms. Meinders outside of work.

In order for a person to clock into the employer's time-reporting system, the person would generally have to enter a personal code on a designated computer terminal. The designated computer terminal was located just inside the employee entrance. One or more managers and support staff had the ability to enter employee time-reporting information by other means. On the day in question, the employer had just switched from having employees use social security numbers to log in and out to having employees use an "alternate identification number" (AIN). Employees already used their AIN when completing paperwork in the normal course of business and coworkers were thereby made aware of the AIN. After Ms. Meinders appeared on the employer's system at 10:45 a.m. as being clocked in for work, Store Manager Debbie Fowler and Home Department Manager Chelsea Bryant unsuccessfully attempted to locate Ms. Meinders. The managers then reviewed video surveillance from the camera located in the vicinity of the designated terminal. The employer's surveillance system records in three-minute segments. It is unclear whether these are continuous, consecutive three-minute intervals or whether there are gaps in the records. The video surveillance record showed Ms. Bigley clocking in at 10:46 a.m. for the scheduled start of her shift. The employer did not provide a copy of the surveillance record, documentation of Ms. Meinders' or Ms. Bigley's log in time, or testimony from either manager who reviewed the video surveillance on the day in question.

Based on the proximity of Ms. Bigley's log in time and Ms. Meinders' alleged log in time, Store Manager Debbie Fowler concluded that Ms. Bigley had used Ms. Meinders' AIN to log Ms. Meinders into the system. Ms. Fowler summoned Ms. Bigley to a meeting at which Ms. Fowler accused Ms. Bigley of the deed. Ms. Bigley could not recall who Ms. Meinders' was and had to be reminded by Ms. Bryant that Ms. Meinders was the new employee in the home department. Ms. Bigley denied any knowledge or involvement in the matter and asserted that she had merely logged herself in at the scheduled start of her shift as required. At one point in the conversation, Ms. Fowler asserted that Ms. Bigley had not even been scheduled to work on the day in question, thereby implying that Ms. Bigley had come to the store for the sole purpose of clocking in Ms. Meinders. Ms. Bigley had in fact been scheduled to work. Ms. Fowler proceeded to discharge Ms. Bigley for "suspicion" of clocking in another employee in violation of the employer's time-reporting policy.

## REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Bigley was discharged for misconduct in connection with the 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).

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 evidence presented by the employer is rife with allegations of misconduct but short on substance. The employer had the ability to present more direct and satisfactory evidence to support its allegation of misconduct, but elected not to do so. Such direct and satisfactory evidence might have consisted of testimony from the two managers who conducted the investigation and who continue to be employed at Dillard. Such direct and satisfactory evidence might have consisted of the video record upon which the employer purportedly based its allegation and conclusion that Ms. Bigley engaged in deliberate misconduct. The employer has failed to meet its burden of corroborating and substantiating its allegation of misconduct.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Bigley was discharged for no disqualifying reason. Accordingly, Ms. Bigley is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Bigley.

#### DECISION:

The Agency representative's decision dated April 6, 2006, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

jt/pjs