

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTY M STEFFEN
Claimant

APPEAL NO. 10A-UI-09383-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CASEY'S MARKETING COMPANY
CASEY'S GENERAL STORES**
Employer

**OC: 05/16/10
Claimant: Appellant (1)**

Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Christy Steffen filed a timely appeal from the June 28, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 1, 2010. Ms. Steffen participated personally and was represented by attorney Todd Locher. Angela Boge, Store Manager, represented the employer. Exhibits One through Eight were 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: Christy Steffen was employed by Casey's General Stores as a part-time cashier from February 2008 until May 16, 2010, when Store Manager Angela Boge discharged her for careless and/or negligent performance of her assigned work duties. Ms. Boge and her assistant manager were Ms. Steffen's immediate supervisors.

The final incident that triggered the discharge occurred on May 15, 2010. During that shift, Ms. Steffen was the person assigned primary responsibility for running the cash register. Another employee, Zach, was there to act as a backup cashier and to perform various cleaning duties. During the shift, a motorist obtained gasoline from one of the employer's pumps and drove away without paying. Either Ms. Steffen or Zach had to push a button authorizing the pump before the motorist could begin pumping gas. While Zach was away performing the cleanup duties, Ms. Steffen abandoned the cash register area to go chat with the kitchen staff. Ms. Steffen was expected to stay at her post while the customer was fueling to make certain the customer paid for the gasoline and did not drive off. While Ms. Steffen was away from her post, she was not in a position to identify the motorist of the vehicle involved in the drive-off. During the same shift, Ms. Steffen failed to properly document voided transactions she handled on her assigned register. During the same shift, Ms. Steffen also failed to properly document use of employee discounts and phone card sales.

The final incident followed several prior incidents of similar negligent or careless work performance and multiple reprimands for similar conduct.

REASONING AND CONCLUSIONS OF LAW:

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.

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 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 in the record establishes a pattern of carelessness on the part of Ms. Steffen. Ms. Steffen was aware that drive-offs were a problem. Ms. Steffen was aware that one way to deter the drive-offs was to be visible at the cash register and to use the public announcement system to communicate with the driver. Ms. Steffen had sufficient experience working for the employer to know that when there were two employees working, one needed to remain in the cash register area. Ms. Steffen had sufficient experience working for the employer to know how to prioritize her duties to minimize time away from the cash register when customers were fueling their vehicles. The pattern of carelessness on the part of Ms. Steffen is sufficient to indicate a willful disregard of the employer's interests.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Steffen was discharged for misconduct. Accordingly, Ms. Steffen is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Steffen.

DECISION:

The Agency representative's June 28, 2010, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements. The employer's account will not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw