

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHERYL L FISHER**  
Claimant

**APPEAL NO. 14A-UI-01737-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DES MOINES IND COMMUNITY SCH DIST**  
Employer

**OC: 01/12/14**  
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the February 4, 2014, reference 01, decision that allowed benefits to the claimant provided the claimant was otherwise eligible and that held the employer's account could be charged for benefits. After due notice was issued, a hearing was held on March 7, 2014. Claimant Cheryl Fisher participated. Cathy McKay, Director of Benefits and Risk Management, represented the employer. The administrative law judge took official notice of the agency's record of benefits disbursed to the claimant and received Exhibits One through Four 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: Cheryl Fisher was employed by the Des Moines Independent Community School District as a part-time food service worker from 2002 until December 20, 2013, when the employer discharged her from the employment based on a 2005 founded child abuse report. The 2005 matter concerned off-duty conduct that did not involve the school district. Ms. Fisher had reported the matter to a supervisor as it was unfolding and reported the founded child abuse complaint to the supervisor at the time the Iowa Department of Human Services made its finding. Though the employer's written policy required that Ms. Fisher notify the employer's office of Human Resources of any alleged or founded child abuse complaint, Ms. Fisher and her supervisor both overlooked that requirement and neither reported the matter to the office of Human Resources. The Iowa Legislature recently passed a law that requires school districts to run background checks on new and current employees. When the employer ran its background check on Ms. Fisher, the 2005 founded child abuse complaint came to the attention of the employer's human resources personnel.

## 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 weight of the evidence in the record fails to establish that Ms. Fisher intentionally violated the employer's written policy or that she intentionally withheld information from the employer. The weight of the evidence indicates instead that Ms. Fisher reported the matters to her supervisor in good faith in 2005 and was unaware that she needed to do more. The supervisor contributed to the negligent failure to report the matter to the office of Human Resources. Given the supervisor's knowledge of the matter in 2005, Ms. Fisher's negligence in failing to report the matter to the employer would no longer involve a current act as of December 2013 when the matter came to the attention of the employer's office of Human Resources.

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

**DECISION:**

The Claims Deputy's February 4, 2014, reference 01, decision 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.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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