

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CAROLYN A JONES**

Claimant

**APPEAL NO. 15A-UI-03382-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**

Employer

**OC: 03/01/15**

**Claimant: Appellant (4)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct  
871 IAC 24.32(9) – Disciplinary Suspension

**STATEMENT OF THE CASE:**

Carolyn Jones filed a timely appeal from the March 13, 2015, reference 01, decision that disqualified the claimant for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that the claimant had been discharged on February 27, 2015 for misconduct in connection with the employment. After due notice was issued, a hearing was held on April 28, 2015. Ms. Jones participated. Kristi Fox, Human Resources Clerk, represented the employer.

**ISSUE:**

Whether the claimant was suspended or 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: Carolyn Jones was employed by Tyson Fresh Meats, Inc., as a full-time production worker from 1990 until March 3, 2015, when she was discharged for violating the employer's zero-tolerance policy regarding fighting in the workplace. The employer had suspended Ms. Jones from the employment on February 27, 2015 after an incident that day involving Ms. Jones and a coworker. The coworker instigated the confrontation after the coworker concluded, perhaps erroneously, that Ms. Jones and another employee had been speaking about her. The coworker got up close to Ms. Jones' face and repeatedly called Ms. Jones a nigger. Ms. Jones is African-American and the coworker is Caucasian. Ms. Jones told the coworker to back up. The coworker touched Ms. Jones' nose as the coworker ranted at Ms. Jones. When the coworker did not back away in response to Ms. Jones directive to back up, Ms. Jones pushed the coworker into a wall. The coworker then said, "I don't mind getting fired over a nigger like you." The coworker then summoned a supervisor. The supervisor had Ms. Jones write a statement. The employer's human resources supervisor then suspended Ms. Jones and the coworker and directed both to return on March 3 after the employer concluded its investigation. The employer discharged both on March 3. Ms. Jones successfully grieved her discharge and was reinstated to the employment effective April 15, 2015.

## 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.

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 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).

An employee who engages in a physical altercation in the workplace, regardless of whether the employee struck the first blow, engages in misconduct where the employee's actions are not in self-defense or the employee failed to retreat from the physical altercation. See Savage v. Employment Appeal Board, 529 N.W.2d 640 (Iowa App. 1995).

Iowa Administrative Code rule 871-24.32(9) provides as follows:

Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

The benefit disqualification to be imposed in connection with a disciplinary suspension for misconduct is limited to the period of the suspension. See FDL Foods, Inc., v. Employment Appeal Board, 456 N.W.2d 233 (Iowa Ct. App. 1990).

The weight of the evidence in the record establishes misconduct in connection with the employment. Ms. Jones concedes that she could have walked away from the confrontation with the coworker. The evidence does not indicate that Ms. Jones acted in self-defense when she elected to shove the coworker. The weight of the evidence indicates that Ms. Jones' March 3, 2015 discharge was effectively transformed into a disciplinary suspension through the grievance process. Ms. Jones is disqualified for benefits for the period of March 1, 2015 through April 18, 2015. This is the period during which Ms. Jones had an active claim for benefits and the benefit period that coincides with the period of the effective suspension from the employment. The employer's account has not been charged for benefits for the period of the effective suspension.

**DECISION:**

The March 13, 2015, reference 01, decision is modified to limit the disqualification to the period of the effective disciplinary suspension that coincided with the period when the claimant's unemployment insurance claim was active. The claimant was effectively suspended for misconduct in connection with the employment. The claimant is disqualified for benefits for the period of March 1, 2015 through April 18, 2015. The employer's account has not been charged for benefits for the period of the effective suspension.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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