

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MELISSA R CARNAGEY
Claimant

WALMART INC
Employer

APPEAL NO. 19A-UI-08888-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/20/19
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Melissa Carnagey filed a timely appeal from the November 7, 2019, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Ms. Carnagey was discharged on October 23, 2019 for violation of a known company rule. After due notice was issued, a hearing was held on December 4, 2019. Ms. Carnagey participated. Barbara Boston represented the employer and presented additional testimony through Charles Dukes.

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: Melissa Carnagey was employed by Walmart, Inc. as a full-time Certified Pharmacy Technician until October 23, 2019, when the employer discharged her from the employment. Ms. Carnagey worked at the Walmart store in Shenandoah. She began her employment in 2015 as a Pharmacy Technician in Training and became a Certified Pharmacy Technician in 2016. Barbara Boston, Pharmacy Manager, was Ms. Carnagey's supervisor.

The incident that triggered the discharge occurred on October 7, 2019. Ms. Boston was away from the workplace at the time of the incident, but learned of it that day. Pharmacist Reese Geis was supervising Ms. Carnagey's work. During Ms. Carnagey's shift, the pharmacy was both busy and short-staffed. After another pharmacy technician returned from break, Ms. Carnagey went to another area of the store where office supplies were stored to get fresh markers she needed to perform assigned "back count" work of marking opened bottles of pills. Ms. Carnagey first called the other area of the store to confirm they had the markers she needed. At the time Ms. Carnagey departed for the other part of the store, the pharmacy had 60 prescriptions that needed to be filled. Ms. Carnagey attempted to notify Mr. Geis of her need to step away, but Mr. Geis was on the telephone at the time. Ms. Carnagey told a coworker that she was running back to get markers and would be right back. When Ms. Carnagey got to the

other part of the store, she had to wait to be served. Ms. Carnagey had been gone for 10 minutes when Mr. Geis used the store's public address system to page her to return to the pharmacy.

Ms. Carnagey was displeased with being paged to return to the pharmacy. When she returned to the pharmacy, she and Mr. Geis engaged in a raised-voice exchange of words at the pharmacy entry door. Mr. Geis asked Ms. Carnagey where she had been and stated he could not believe she would just walk off. Ms. Carnagey told Mr. Geis that he had been on the phone and that she had told Certified Pharmacy Technician Kim Gross before she left the pharmacy area. Mr. Geis told Ms. Carnagey that it was stupid for her to walk off when there were so many "in fills" just to get markers. Ms. Carnagey told Mr. Geis that it wasn't like she had been shopping, that she had gone to get markers so she could do her job properly, and that the pharmacy had not had any good markers at the time. Mr. Geis told Ms. Carnagey that she could have made better choices. Ms. Carnagey was embarrassed by being paged and scolded. Ms. Carnagey made the flippant remark that the next time a particular pharmacy technician was gone on break too long, Mr. Geis would have to page that person to return to the pharmacy. Mr. Geis told Ms. Carnagey that he was done with the matter. Ms. Carnagey returned to her work duties. One or more waiting customers were within earshot of the raised-voice exchange. One customer asked about the commotion. Three other employees were present for the exchange. They included Lead Pharmacy Technician Amanda Gray Bradman, cashier Mallory Johnson, and Certified Pharmacy Technician Kimberly Gross.

On October 7, Mr. Geis reported the incident to Ms. Boston and to District Manager Nancy Layman. Ms. Boston was preparing to undergo a surgical procedure scheduled for October 9, 2019 and was scheduled to commence a period of medical leave in connection with the surgery and recovery from the surgery. Ms. Carnagey also reported the incident to Ms. Boston on October 7, when Ms. Boston reported for work. Ms. Boston told Ms. Carnagey that Mr. Geis had reported the matter to Ms. Boston and Ms. Layman. Ms. Boston told Ms. Carnagey that she did not understand why Mr. Geis had not moved the conversation with Ms. Carnagey to a private area. On October 10, Ms. Carnagey commenced an approved period of vacation. On October 21, 2019, Ms. Carnagey returned to work. On October 10, Ms. Johnson completed a written statement and sent it by email to Ms. Boston and Ms. Layman. On October 11, Ms. Gross sent her written statement by email to Ms. Boston and Ms. Layman. Ms. Boston was bed-ridden for a week following her surgery and did not return to work until several weeks later. In the context of Ms. Boston's absence from the workplace, Ms. District Manager Nancy Layman determined it was best that Stewart Anderson, Store Director, should address the matter. Ms. Boston spoke to Mr. Anderson and the pair decided to discharge Ms. Carnagey from the employment. Assistant Manager Charles Dukes carried out the discharge on October 23, 2019. That was the first time the employer told Ms. Carnagey she could or would be discharged from the employment.

In making the decision to discharge Ms. Carnagey from the employment, the employer considered reprimands issued to Ms. Carnagey during the final 12 months of the employment. At the beginning of August 2019, Ms. Boston spoke to Ms. Carnagey regarding the need to be more focused and productive. At the beginning of September 2019, Ms. Boston again spoke with Ms. Carnagey about the same concerns after concluding that the needed improvement had not occurred. Ms. Carnagey demonstrated improvement during a short period, but the employer subsequently had similar productivity concerns.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)(a) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

The weight of the evidence in the record establishes a discharge for no disqualifying reason. Ms. Carnagey made a good faith error in judgment when she went to get the markers she needed to perform her work. The weight of the evidence establishes that Mr. Geis unnecessarily escalated the exchange between himself and Ms. Carnagey on October 7, 2019. Ms. Carnagey's reaction and comments at the time were in response to that escalation and public scolding. Ms. Carnagey's conduct, taken in context, did not rise to the level of misconduct in connection with the employment. Neither the final incident nor the prior productivity concerns indicated a willful and wanton disregard of the employer's interests. Ms. Carnagey is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The November 7, 2019, reference 01, decision is reversed. The claimant was discharged on October 23, 2019 for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn