

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAYLIN R DOHMAN
Claimant

APPEAL NO. 10A-UI-09085-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA ORTHOPAEDIC CENTER PC
Employer

OC: 05/23/10
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Kaylin Dohman filed a timely appeal from the June 18, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 11, 2010. Ms. Dohman participated. Renee Pile, Human Resources Director, represented the employer and presented additional testimony through Kari Boyens, Back Office Manager. Exhibits One through 10 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: Kaylin Dohman was employed by Iowa Orthopaedic Center as a full-time back office assistant from August 2008 until May 27, 2010, when Renee Pile, Human Resources Director, and Kari Boyens, Back Office Manager, discharged her from the employment.

The final incident that prompted the discharge concerned Ms. Dohman's discussion with coworkers, in part through e-mail, the employer's decision to transfer her to employer's west office. The employer needed someone to transfer to the west office, but no one volunteered. The employer decided to compel Ms. Dohman to transfer as a means of filling the vacant west office position and as a means of eliminating Ms. Dohman's contribution to the gossiping that took place at the main office. On May 24, 2010, the employer notified Ms. Dohman of the decision and presented the involuntary transfer as a means by which Ms. Dohman could build her skill set to justify a wage increase at some point in the future. On May 25, Ms. Dohman asked the employer to wait until her last day in the main office to announce her transfer to the other staff. Despite that request, Ms. Dohman mentioned to several coworkers that she was being forced to transfer to the west office. Ms. Dohman sent an e-mail to a coworker on May 26 in which she indicated she was being forced to transfer to the west office due to the gossip issue. The employer viewed the e-mail and the additional conversation it referenced to be a

violation of the employer's workplace communications, personal communications, and code of business conduct policies.

The final incident followed incidents on March 15, 2010 and April 15, 2010, wherein Ms. Dohman deviated from the employer lunch break policy and reported inaccurate travel and lunch time.

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 final incident that prompted the discharge from the employment involved an error in judgment on the part of Ms. Dohman, but did not involve misconduct of sufficient seriousness to disqualify Ms. Dohman for unemployment insurance benefits. The employer was in fact forcing Ms. Dohman to accept a transfer due to her contribution to gossip in the main office. This included Ms. Dohman's concern that one or more other employees were making a higher wage than she was making. Ms. Dohman had a few coworkers with whom she was friends and notified those coworkers of the transfer, along with the basis of the transfer. Ms. Dohman provided the coworkers with a frank statement of the reasons why she thought she was being transferred. Ms. Dohman did not denigrate the employer or other staff. This sort of venting was to be expected under the circumstances and was not done with the intention to willfully or wantonly violate the interests of the employer.

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

DECISION:

The Agency representative's June 18, 2010, reference 01, decision is reversed. 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs