

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**CRYSTAL D MARCOS**  
Claimant

**APPEAL NO. 18A-UI-10031-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DOLGENCORP LLC**  
Employer

**OC: 08/26/18**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Crystal Marcos filed a timely appeal from the September 24, 2018, reference 02, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on the Benefits Bureau deputy's conclusion that Ms. Marcos was discharged on August 22, 2018 for dishonesty in connection with the employment. After due notice was issued, a hearing was held on October 19, 2018. Ms. Marcos participated. Amber Ingram represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 18A-UI-10032-JTT. Exhibit A was received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant.

**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: Crystal Marcos was employed by Dolgencorp, L.L.C., d/b/a Dollar General, as a full-time Assistant Manager at the employer's store in Mount Pleasant until August 30, 2018, when the employer discharged her for time card fraud. Ms. Marcos began her employment in November 2017 as a Store Associate at the Mount Pleasant store. With a few weeks, Ms. Marcos was promoted to Key Holder. In February 2018, Ms. Marcos was promoted to Assistant Manager. Throughout the employment, Ms. Marcos was an hourly employee, rather than a salaried employee. In July 2018, Amber Ingram transferred to the Mount Pleasant and became Store Manager at the Mount Pleasant store. As Store Manager, Ms. Ingram was Ms. Marcos' immediate supervisor.

The conduct that triggered the employer's decision to discharge Ms. Marcos from the employment occurred on August 8, 9 and 10, 2018, while Ms. Ingram was away from the store on vacation. On August 8, Ms. Marcos was scheduled to work from 7:30 a.m. to 3:00 p.m.

Ms. Marcos arrived at 8:05 a.m. Ms. Marcos manually adjusted her clock in time to indicate an arrival at 7:30 a.m. On August 9, Ms. Marcos was scheduled to work from 7:30 a.m. to 2:00 p.m. Ms. Marcos arrived at 8:02 a.m. Ms. Marcos manually adjusted her clock in time to indicate an arrival at 7:30 a.m. On August 10, Ms. Marcos was scheduled to work from 7:30 a.m. to 4:00 p.m. Ms. Marcos arrived at 7:53 a.m. Ms. Marcos manually adjusted her clock in time to indicate an arrival at 7:30 a.m. While Ms. Marcos was away on vacation, the District Manager, D.J. McDaniel was monitoring labor hours at the Mount Pleasant store and became concerned about an apparent increase in reported labor hours. This prompted Mr. McDaniel to review Ms. Marcos' time report and to compare it with surveillance video that documented her arrival and departure from the Mount Pleasant store. That review revealed the discrepancy between the arrival times Ms. Marcos had documented and her actual arrival times documented through the surveillance video. Mr. McDaniel started and completed this initial investigation on August 18. On August 21, Mr. McDaniel and Ms. Ingram met with Ms. Marcos. At that time, Mr. McDaniel told Ms. Marcos that she was under investigation for falsifying her time report and that the investigation could lead to discharge from the employment. Mr. McDaniel then conferred with the employer's human resources personnel, who directed Mr. McDaniel to review earlier records for similar conduct. That review uncovered additional instances of suspected time card fraud. On August 30, Mr. McDaniel, after consulting with the human resources personnel, notified Ms. Marcos that she was discharged from the employment.

#### **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 based on misconduct in connection with the employment. The weight of the evidence establishes that Ms. Marcos did indeed falsify her time arrival on August 8, 9, and 10, to make it appear in the time report that she had arrived on time when she had been late. The falsification enabled Ms. Marcos to request payment from the employer for time when she had not been performing work on behalf of the employer. As an Assistant Manager, Ms. Marcos was in a position of trust. Ms. Marcos's intentional dishonesty in reporting her work time undermined that trust relationship and demonstrated an intentional and substantial disregard for the employer's interests. The evidence establishes a current act. The misconduct that triggered the discharge occurred on August 8, 9 and 10 and was discovered by the employer on August 18, 2018. On August 21, the employer placed Ms. Marcos on notice that the employer was investigating Ms. Marcos' timekeeping and that the investigation could lead to her being discharged from the employment. The lapse between discovery of the misconduct and notice to Ms. Marcos of the potential for discharge was three days. The actual discharge occurred nine days later. The employer did not unreasonably delay in its investigation or in getting around to discharging Ms. Marcos from the employment. Ms. Marcos is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. Ms. Marcos must meet all other eligibility requirements. The employer's account shall not be charged.

**DECISION:**

The September 24, 2018, reference 02, 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 amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs