

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHERYL RIES
Claimant

APPEAL NO. 14A-UI-07175-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HARVEST MANAGEMENT SUB TRS CORP
Employer

OC: 06/15/14
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Cheryl Ries filed a timely appeal from the July 8, 2014, reference 01, decision that disqualified her for benefits. After due notice was issued, a hearing was held on November 10, 2014. Ms. Ries participated. Valerie Monroe represented the employer. Exhibits One through Six 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: The employer operates an independent living retirement community, Holiday Retirement. Cheryl Ries was employed as a full-time co-manager until June 12, 2014, when the employer discharged her from the employment.

There were two final incidents that triggered the discharge. One was Ms. Ries' alleged rudeness to the daughter-in-law of a resident. Ms. Ries had not been rude to the resident's family member. Ms. Ries' supervisors had instructed Ms. Ries to deal with the stench emitted from the resident's apartment for several months. Ms. Ries took appropriate steps to address the matter with the resident and the resident's son, who told Ms. Ries to deal directly with the resident. The daughter-in-law made in-person contact with Ms. Ries after Ms. Ries spoke with the resident's son. The daughter-in-law was extremely rude to Ms. Ries. Ms. Ries attempted to resolve the daughter-in-law's concern as tactfully as possible under the circumstances. On June 3, 2014, at a time when Ms. Ries was away from work for an approved vacation, the daughter-in-law alleged to Ms. Ries' supervisor that Ms. Ries had been rude.

The other incident that triggered the discharge concerned Ms. Ries' request that the head chef at the employer's facility order and prepare food items that Ms. Ries desired for a Memorial Day weekend family gathering outside of work. Ms. Ries was unaware that such a request was unacceptable to the employer or that it would put her employment in jeopardy. Ms. Ries

requested the head chef's assistance and the head chef indicated a willingness to assist. Ms. Ries offered to pay for the materials prior to placement of the order and multiple times thereafter. The employer did not have a structure in place for accepting Ms. Ries' money in payment and refused to accept payment from Ms. Ries. The employer estimates that it took less than hour for the chef to prepare the food. At no point prior to obtaining the food did the chef or the employer indicate a problem with Ms. Ries' request.

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).

The evidence in the record fails to establish a final incident that involved a willful disregard of the employer's interests. The evidence indicates that Ms. Ries handled the situation with the resident's daughter-in-law to the best of her ability and was not intentionally rude to the resident or the daughter-in-law. With regard to the issue with procuring food for personal use, the evidence indicates at most a good faith error in judgment, not misconduct. The administrative law judge notes that the employer witness cited the food issue as the triggering issue and at the same time conceded that the witness thought it was merely an error in judgment.

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

DECISION:

The claims deputy's July 8, 2014, 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/css