

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DANIELLE R WEAVER**  
Claimant

**APPEAL NO. 14A-UI-04825-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PILOT TRAVEL CENTERS LLC**  
Employer

**OC: 03/23/14**  
**Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

Pilot Travel Centers LLC filed a timely appeal from a representative's decision dated April 30, 2014, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on May 28, 2014. Although duly notified, the claimant did not participate. The employer participated by Ms. Connie Usher, Restaurant General Manager.

**ISSUE:**

The issue is whether the evidence in the record establishes a current act of misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Danielle R. Weaver was employed by Pilot Travel Centers LLC as a full-time sandwich artist. Ms. Weaver was discharged from her employment on March 1, 2014 when the employer concluded that Ms. Weaver had not been truthful on an application for a promotion within the company that had been submitted approximately six to eight weeks earlier.

Ms. Weaver had made an initial application to be promoted to a management position within the company and at that time had filled out an application and questionnaire. One of the questions on the application inquired as to whether the applicant had been convicted of a felony drug offense within the preceding seven years. Ms. Weaver had answered, "no" to that question. The employer performs background checks on applicants for management positions and the background check for Ms. Weaver showed that she had a felony conviction for a drug offense within the preceding seven years. Because of the claimant's conviction, she was not promoted to a management position, but was allowed to continue in her employment with the company. Subsequently, approximately six or eight weeks later, Ms. Weaver again pursued her interests in being promoted to management within the company and at that time the claimant's same application and same background check were again reviewed by the company and at that time the employer concluded that the claimant had been untruthful in her answers to the question

about a previous drug conviction and was discharged from employment. There were no intervening acts of misconduct by Ms. Weaver between the time that she initially made her application for promotion and underwent a background check, and the time of the discharge.

### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes that the claimant was discharged for a current act of misconduct. It does not.

Iowa Code § 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).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing job disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant but whether the claimant is entitled

to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants the denial unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988).

While past acts or warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based upon past acts. The termination of employment must be based upon a current act. See 871 IAC 24.32(8).

In the case at hand, the claimant had applied for a promotion within the company and was required to complete an application for the promotion. The application contained questions about any previous felony convictions within the preceding seven years related to drugs. Ms. Weaver completed her application for the promotion within the company and the company conducted a background check. The background check showed that the claimant had a previous felony conviction related to drugs within the preceding seven years and Ms. Weaver was not promoted to the management position but was allowed to continue in her employment with the company.

Later, when the claimant again expressed interest in obtaining a promotion to management within the company, the company did a more careful review of the claimant's previous application and the background report and then determined that the claimant should be discharged from employment because her application made some eight weeks earlier did not state the claimant's felony drug conviction. It appears that the employer was fully aware of the contents of the claimant's application for promotion and the contents of her background check some six to eight weeks before but had elected not to discharge the claimant. The evidence in the record does not establish any intervening acts of misconduct on the part of Ms. Weaver between the time that the employer initially decided to allow her to continue in her employment and the date of her discharge on March 1, 2014.

For the reasons stated herein, the administrative law judge concludes that the employer has not met its burden of proof to establish a current act of misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated April 30, 2014, reference 01, is affirmed. The claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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