

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHANIE N SEE

Claimant

APPEAL NO. 15A-UI-03775-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP

Employer

OC: 02/15/15

Claimant: Respondent (1)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct
Iowa Code Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 16, 2015, reference 01, decision that that allowed benefits to the claimant, provided she was otherwise eligible, and that held the employer's account could be charged for benefits; based on an Agency conclusion that the claimant had been discharged on February 25, 2015 for no disqualifying reason. After due notice was issued, a hearing was held on April 30, 2015. Claimant Stephanie See participated. Martha Gutierrez, Human Resources Assistant, represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits One and Two into evidence. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

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 claimant was employed by Cargill Meat Solutions Corporation as a full-time production worker. The employer suspended the claimant on February 13, 2015. The employer discharged the claimant on February 25, 2015. The suspension and discharge were based on an incident of workplace violence that occurred on February 13, 2015. On that day, a coworker cornered the claimant in an enclosed work area and assaulted the claimant. The coworker had the claimant bent backwards so that the claimant's back was pressed tight against a piece of equipment. The claimant had no avenue of escape. The claimant pushed the coworker in an attempt to get away from the coworker. The coworker ripped off the claimant's glasses, crushed the claimant's glasses with her foot and then commenced pummeling the claimant. The claimant acted in self-defense in an attempt to prevent the coworker from hitting her. Nonetheless, the coworker landed a blow to the claimant's mouth and caused the claimant's mouth to bleed. The supervisor over both employees watched the situation unfold and did not respond to the claimant's request that he intervene. The coworker continued to assault the

claimant until the claimant's boyfriend, who also worked for the employer, intervened to stop the assault. Only then did the supervisor elect to intervene. As the supervisor was attempting to stop the coworker from assaulting the claimant, the coworker elbowed the supervisor in the face. The employer suspended both employees and recalled the claimant to the workplace only for the purpose of discharging her from the employment. The employer's decision to suspend and discharge the claimant was based on erroneous information concerning where the incident had occurred. The employer had believed the incident occurred in an open floor space and had concluded the claimant could have removed herself from the area.

REASONING AND CONCLUSIONS OF LAW:

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).

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).

An employee who engages in a physical altercation in the workplace, regardless of whether the employee struck the first blow, engages in misconduct where the employee's actions are not in self-defense or the employee failed to retreat from the physical altercation. See Savage v. Employment Appeal Board, 529 N.W.2d 640 (Iowa App. 1995).

The evidence in the record fails to establish misconduct in connection with the employment. The employer elected not to present testimony from anyone with personal knowledge of the incident upon which the suspension and discharge were based. The employer had the ability to present such testimony. The weight of the evidence in the record establishes that the claimant's actions in connection with the incident that prompted the suspension and discharge were in self-defense that the claimant did not have an avenue of retreat from the physical altercation. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The March 16, 2015, reference 01, decision is affirmed. The claimant was discharged on February 25, 2015 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/can