

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JESSICA K MCCANTS**  
Claimant

**CLAIRES BOUTIQUES INC**  
Employer

**APPEAL NO. 23A-UI-08066-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/09/23  
Claimant: Appellant (2)**

Iowa Code Section 96.5(2)(a) & (d) – Discharge

**STATEMENT OF THE CASE:**

On August 21, 2023, Jessica McCants (claimant) filed a timely appeal from the August 11, 2023 (reference 02) decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant was discharged on July 11, 2023 for wanton carelessness in performing her work. After due notice was issued, a hearing was held on September 7, 2023. Claimant participated. RoxAnne Tobias of Equifax represented the employer and presented testimony through Lola Barreda. Exhibits 1 through 4 and A were received into evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Jessica McCants (claimant) was employed by Claire's Boutiques, Inc., a fashion jewelry chain, as a full-time salaried District Sales Manager from 2020 until July 11, 2023, when the employer discharged her from the employment. Toward the end of the employment, the claimant was responsible for 16 stores between Moline, Illinois and Des Moines. The claimant was responsible for all aspects of operations at the stores under her supervision, including operational controls and staff and management development. Lola Barreda, Regional Sales Manager, was the claimant's supervisor. The claimant was responsible for recruiting, hiring and retaining staff. However, hiring decisions had to be approved by Ms. Barreda and involved a second interview with Ms. Barreda.

The employer alleges a final incident in June 2023 that involved the claimant's oversight of the Des Moines Jordan Creek store. The Jordan Creek store manager abruptly quit her employment on June 5, 2023. Multiple additional staff with loyalty to the store manager also quit their employment at the same time. The store manager's departure occurred in the context missing bank deposits for which the store manager was responsible. The departure of the manager and other staff left the Jordan Creek store with minimal remaining staff. Despite her

responsibility to oversee many stores, the claimant was responsible to step and run the Jordan Creek store until a new store manager was hired and ready to assume responsibility for the store. The claimant recruited the Dubuque store manager for the Jordan Creek store manager position and Ms. Barreda approved that course of action. The plan was for the Dubuque manager to work at both the Dubuque and Jordan Creek stores during a transition period during which the Dubuque store manager was to find a new residence and move to the Des Moines metropolitan area.

On June 20-23, 2023, Ms. Barreda and other Claire's Boutique staff joined the claimant and the Dubuque store manager at the Jordan Creek store. Because the claimant was operating the store with minimal staff, and because the claimant was attempting to run the Jordan Creek store while continuing to supervise operations at her other 15 stores, freight was not being processed into the Jordan Creek store as quickly as Ms. Barreda desired and the Jordan Creek store was not as orderly and presentable as Ms. Barreda desired. However, the claimant was performing to the best of her ability under challenging circumstances. In connection with her visit to the Jordan Creek store, Ms. Barreda decided to discharge the claimant from the employment. Though Ms. Barreda and Ms. McCants had weekly meetings, Ms. Barreda did not say anything to the claimant about the employment being in jeopardy until July 11, 2023, when Ms. Barreda carried out the discharge. On June 26, Ms. Barreda presented her discharge recommendation to her supervisor and to human resources personnel. Ms. Barreda's supervisor approved the recommendation on June 26. The employer's human resources personnel did not provide their approval until July 9, 2023. Ms. Barreda does not know the reason for the delayed response.

The employer alleges a next more recent set of concerns associated with Ms. Barreda's visit to on or more of the claimant's stores during the period of February 14 through 17, 2023. Ms. Barreda characterizes the concerns at that time as staff not feeling motivated due an alleged lack of training and lack of in-person contact with the claimant.

Prior to discharging the claimant from the employment, the employer had issued corrective action documents to the claimant on October 24, 2022 and February 28, 2023.

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

Iowa Code section 96.5(2)(a) and (d) provides as follows:

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.

...

d. For the purposes of this subsection, "misconduct" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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. Misconduct by an individual includes but is not limited to all of the following:

...  
(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.  
....

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. For the purposes of this rule, “misconduct” is defined as a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee’s contract of employment. Misconduct is 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 a 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. Misconduct by an individual includes but is not limited to all of the following:

...  
(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.  
...

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 Iowa Administrative Code rule 871-24.32(4).

The evidence in the record establishes a July 11, 2023 discharge for no disqualifying reason. The evidence in the record fails to establish a final and current act of misconduct. The employer struggled during the hearing when asked about specific acts or omissions that factored in the discharge. The employer struggled to move beyond generalized allegations of the sort set forth in the earlier corrective action documents. Those allegations assign fault to the claimant for matters beyond the claimant’s control. The claimant performed her work duties in good faith

and to the best of her ability. The claimant was neither careless nor negligent in the performance of her duties. Toward the end of the employment, the claimant was dealing with a challenging staffing situation at the Jordan Creek store. The claimant did not cause the sudden departure of staff at that store. The claimant recruited a new manager and Ms. Barreda approved the transition plan. The claimant operated the Jordan Creek store to the best of her ability while understaffed at that store and while continuing to supervise 15 other stores. The claimant's inability to perform to the employer's satisfaction did not constitute a disregard of the employer's interests and was not misconduct in connection with the employment. Even if there had been some indication of misconduct during Ms. Barreda's June 20-23 visit to the Jordan Creek store, the employer unreasonably delayed addressing those concerns with the claimant. The employer has failed to present a reasonable basis for the extended delay between Ms. Barreda's discharge decision and discussing her final concerns with the claimant. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.

**DECISION:**

The August 11, 2023 (reference 02) decision is REVERSED. The claimant was discharged on July 11, 2023 for no disqualifying reason. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.



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James E. Timberland  
Administrative Law Judge

September 15, 2023  
Decision Dated and Mailed

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**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
4th Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.