

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**AMY M GOODRIDGE**

Claimant

**APPEAL NO. 18A-UI-08913-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**

Employer

**OC: 07/29/18**

**Claimant: Respondent (1)**

Iowa Code section 96.5(2)(a) – Discharge

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the August 16, 2018, reference 01, decision 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 the Benefits Bureau deputy's conclusion that the claimant was discharged on August 1, 2018 for no disqualifying reason. After due notice was issued, a hearing was held on September 12, 2018. Claimant Amy Goodridge participated. Judy Berry of Corporate Cost Control represented the employer and presented testimony through Chris Gordy. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1, 2 and 3 into evidence.

**ISSUES:**

Whether Ms. Goodridge was discharged for misconduct in connection with the employment that disqualifies her for unemployment insurance benefits.

Whether the employer's account may be charged.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Amy Goodridge was employed by Hy-Vee from December 2016 until August 1, 2018, when Chris Gordy, Store Director, discharged her from the employment. Ms. Goodridge worked at the Hy-Vee store in Creston. From April 2017 until the end of the employment, Ms. Goodridge was a full-time assistant manager. Ms. Goodridge primarily worked evening shifts, usually started work at 3:00 p.m. and would usually be done with her shift sometime between 11:30 p.m. and 12:30 a.m. As an assistant manager, Ms. Goodridge was responsible for all aspects of store operations, including supervision of subordinate employees. Ms. Goodridge generally supervised about six employees per shift. Those employees included clerks and stockers and included both adults and minors.

The conduct that triggered the discharge occurred during Ms. Goodridge's shift on July 26, 2018. On that date, Ms. Goodridge was the closing manager. After about 7:30 p.m., Ms. Goodridge and a less senior second assistant manager were the only managers on duty. During the shift, Ms. Goodridge engaged in flirtatious behavior with an off-duty Hy-Vee meat

department clerk, Charlie. The flirtatious behavior occurred at the front of the store in the presence of other employees and at a time when customers were in the store. Following the July 26 shift one of the minor employees who had been working at the store at the time of the flirtatious behavior, reported conduct to Mr. Gordy and indicated that the conduct had made the minor employee uncomfortable. Ms. Goodridge was not the meat department clerk's immediate supervisor, but as an assistant manager she held and exercised supervisory authority over the clerk's work when the pair were working at the same time. Based on the minor employee's complaint, Mr. Gordy reviewed surveillance video from July 26. The surveillance video showed Ms. Goodridge and Charlie lingering, flirting, and flirtatiously touching in the customer service area at the front of the store from 9:00 p.m. to 9:25 p.m. Charlie had brought Ms. Goodridge dinner. The surveillance video showed Ms. Goodridge and Charlie exiting the store together at 9:26 p.m. and re-entering the store together at 9:40 p.m. Ms. Goodrich had taken her dinner just outside the store so that she could eat her dinner while Charlie and the second assistant manager smoked. The surveillance video showed Ms. Goodridge and Charlie thereafter lingering at a closed cash register from 9:40 p.m. to 9:56 p.m. again engaged in flirting, and flirtatious touching. Ms. Goodridge was at the time attempting to balance the cash register drawer while Charlie was playfully touching her neck. The video showed Ms. Goodridge and Charlie kissing at the front of the store before Charlie departed from the store.

On August 1, 2018, Mr. Gordy met with Ms. Goodridge for the purpose of discharging her from the employment. Mr. Gordy showed Ms. Goodridge a brief video clip of flirtatious interaction with Charlie after the pair had returned inside the store on July 26. Ms. Goodridge denied that she had engaged in any inappropriate conduct. Mr. Gordy told Ms. Goodridge that her conduct had been unbecoming for a Hy-Vee manager and had undermined her ability to lead and keep the respect of her subordinates.

In making the decision to discharge Ms. Goodridge from the employment, Mr. Gordy considered the employer's written Code of Conduct set forth at the beginning of the employee handbook the employer provided to Ms. Goodridge at the time of hire. The Code of Conduct included the following:

The fundamentals of Hy-Vee are: honesty, integrity, friendliness, caring, sincerity, ethics, morals, dedication, sharing, fairness, manners, dignity and ownership. Keeping these fundamentals in mind helps all employees provide the outstanding service our customers have grown to expect. Lingering, horseplay, fighting, disorderly conduct or soliciting are not allowed.

In making the decision to discharge Ms. Goodridge from the employment, Mr. Gordy considered as a minor factor a written reprimand that Brian Davis, Assistant Store Director, had issued to Ms. Goodridge in December 2017 for assisting Charlie in the meat department at a time when there were manager closing duties Ms. Goodridge was supposed to be performing. At the time, Ms. Goodridge was temporarily assisting in the meat department so that Charlie could work uninterrupted on preparing a large meat tray. As the manager on duty, Ms. Goodridge would from time to time need to assist in the meat department under similar circumstances.

## **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 Iowa Administrative Code rule 871-24.32(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 weight of the evidence in the record establishes a discharge for no disqualifying reason. The evidence establishes that Ms. Goodridge exercised extremely poor judgment on the evening on July 26 concerning her interaction with Charlie at the front of the Hy-Vee store. However, the weight of the evidence does not establish that Ms. Goodridge acted with a willful and wanton disregard for the employer's interests. Ms. Goodridge was and apparently still is oblivious to how others, including subordinate employees, might perceive her interaction with Charlie. The employer lacked a fraternization policy and relied instead on Ms. Goodridge to

exercise good judgment. In this isolated instance, Ms. Goodridge fell far short of that expectation. However, Ms. Goodridge's poor judgment did not rise to the level of misconduct that would disqualify her for unemployment insurance benefits. The December 2017 incident and written reprimand had little bearing on the employer's decision to discharge Ms. Goodridge from the employment and has minimal bearing on the outcome of this case. The weight of the evidence establishes that in that instance Ms. Goodridge merely prioritized duties in a manner different than Mr. Davis might have. An employee's prioritizing of competing duties differently than the supervisor does not constitute misconduct in connection with the employment. See *Richers v. Employment Appeal Board*, 479 N.W.2d 308 (Iowa 1991)

Because the evidence establishes a discharge for no disqualifying reason, Ms. Goodridge is eligible for benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits.

**DECISION:**

The August 16, 2018, reference 01, decision is affirmed. The claimant was discharged on August 1, 2018 for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs