

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTY L CORNWELL
Claimant

APPEAL NO. 15A-UI-08942-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KIMS FOODS INC – WENDY’S
Employer

OC: 07/12/15
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 30, 2015, 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 an Agency conclusion that the claimant was discharged on July 14, 2015 for no disqualifying reason. After due notice was issued, a hearing was held on August 27, 2015. Claimant Christy Cornwell participated. Connie Hickerson of Equifax represented the employer and presented testimony through Amber Niles, Dennis Stark, Becky Burns, and Connie Wilson. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits One through Seven 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: Christy Cornwell was employed by Kim's Foods, Inc., doing business as Wendy's, until July 14, 2015 when Dennis Stark discharged her from the employment. Ms. Cornwell worked for the employer for several years as the Information Technology Support Manager before the employer changed her duties during the last year of the employment.

Because the employer had a decreased need for I.T. support, the employer assigned Ms. Cornwell to perform other operational duties at the employer's restaurants. Ms. Cornwell assisted a great deal at the employer's Merle Hay store. Ms. Cornwell was not designated a restaurant manager, but was also not regular staff. This organizational anomaly led to friction between Ms. Cornwell and Connie Wilson, General Manager of the employer's Merle Hay store. Ms. Cornwell concluded that Ms. Wilson was mismanaging the Merle Hay store. Ms. Cornwell concluded that the employer was at risk of losing junior management staff as a result of the communication issues at the Merle Hay store. Ms. Cornwell attempted to bring her concerns to the employer. Ms. Cornwell attempted to be a sounding board for the junior management staff

at the Merle Hay store. Ms. Cornwell counseled the junior management staff to follow the chain of command. When the junior management staff asserted they had followed the chain of command without remedy, Ms. Cornwell counseled the staff to go up the chain of command.

Ms. Wilson and Becky Burns, District Manager, viewed Ms. Cornwell's involvement in the Merle Hay store issues as interference. At one point, Ms. Burns asked Ms. Cornwell whether Ms. Cornwell thought Ms. Burns would let the Merle Hay store fail. Ms. Cornwell provided a frank and honest response, that she did think Ms. Burns did not care enough to prevent an exodus at the Merle Hay store. That interaction led to Dennis Stark, Director of Operations, directing Ms. Cornwell to appear for a meeting. Mr. Stark then issued directives that heightened Ms. Cornwell's anxiety and led her to believe that her discharge was imminent. Mr. Stark had Ms. Cornwell appear at particular store locations to participate in meetings that did not happen. By the time Mr. Stark actually held a meeting with Ms. Cornwell, her anxiety level was so high that she told Mr. Stark "to just do it" or something similar. Mr. Stark seized on that utterance and the events leading up to it to conclude that Ms. Cornwell was being insubordinate and discharged her from the employment.

Ms. Cornwell established a claim for benefits that was effective July 12, 2015 and received benefits.

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) alone. 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).

Continued failure to follow reasonable instructions constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See Woods v. Iowa Department of Job Service, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See Endicott v. Iowa Department of Job Service, 367 N.W.2d 300 (Iowa Ct. App. 1985).

In Gilliam v. Atlantic Bottling Company, the Iowa Court of Appeals upheld a discharge for misconduct and disqualification for benefits where the claimant had been repeatedly instructed over the course of more than a month to perform a specific task and was part of his assigned duties. The employer reminded the claimant on several occasions to perform the task. The employee refused to perform the task on two separate occasions. On both occasions, the employer discussed with the employee a basis for his refusal. The employer waited until after the employee's second refusal, when the employee still neglected to perform the assigned task, and then discharged employee. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990).

The evidence in the record fails to establish insubordination or other misconduct in connection with the employment. The weight of the evidence indicates that the way the employer restructured Ms. Cornwell's employment during the last year of her employment invited the problems that arose. Ms. Cornwell was indeed a manager, specifically an I.T. Support Manager. However, the employer expected her to abandon her manager mindset when she worked at the employer's restaurants. The structure led to some errors in judgment on the part

of Ms. Cornwell wherein Ms. Cornwell appeared to encroach on the authority of Ms. Wilson and Ms. Burns. Any such encroachment was motivated by Ms. Cornwell's desire to serve the interests of the employer. The employer erroneously leapt to the conclusion that Ms. Cornwell was being insubordinate.

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

DECISION:

The July 30, 2015, reference 01, decision is affirmed. 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