

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBORAH MIXON
Claimant

APPEAL NO. 13A-UI-02384-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

MEDIACOM COMMUNICATIONS
Employer

**OC: 01/06/13
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the representative's decision dated February 19, 2013, reference 01, which held that the claimant was not eligible for unemployment insurance benefits. After due notice was issued, a hearing was held by telephone conference call on April 18, 2013. The claimant participated personally. The employer participated by Debra Dickinson, HIM and HR Supervisor, and Teresa Kave, Human Resources Administrator. The record consists of the testimony of Teresa Kave; the testimony of Debra Dickinson; the testimony of Deborah Mixon; and Claimant's Exhibits A-D.

ISSUE:

Whether the claimant was discharged for a current act of misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge makes the following findings of fact:

The employer provides cable internet and phone service. The claimant was hired on July 16, 2012, as a full time direct sales representative. The claimant's customers were residences. Her last day of actual work was September 28, 2012. The claimant was placed on administrative leave by her employer after she disclosed that she had been arrested for shoplifting.

On November 13, 2012, the claimant informed her employer that she had been to court and found innocent. The employer asked the claimant to provide further information so that a determination could be made on her continued employment. The employer made several requests and the claimant did not respond.

On December 3, 2012, the employer searched Iowa Courts On Line and discovered that the claimant had been found guilty. A letter was sent to the claimant requesting that she contact the employer. The local management recommended to "corporate" that the claimant be terminated for providing dishonest information about her criminal case. Corporate management did not approve the termination until January 7, 2013, at which time the claimant was terminated. The

reason for the delay was the necessity of division and corporate approval; the holidays; and employee vacations.

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.

871 IAC 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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8) See also Greene v. EAB, 426 N.W.2d 659 (Iowa App. 1988) The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. The evidence established that she was not discharged for a *current* act of misconduct. The employer had all of the information it needed to terminate the claimant as of December 3, 2012. The claimant was discharged for falsifying information about her criminal case. Although the employer knew about the falsification on December 3, 2012, it still waited until January 7, 2013, to actually terminate the claimant. When asked the reason for the delay, the employer said that corporate had to approve the termination. The holidays and employee vacations also contributed to the delay. Although an employer is given a reasonable amount of time for investigation, the lapse of over a month means that the misconduct is not current. A disqualification is imposed only when the

discharge is for a current act of misconduct. Since there was no current act of misconduct in this case, benefits are allowed if the claimant is otherwise eligible.

DECISION:

The unemployment insurance decision dated February 19, 2013, reference 01, is reversed. Unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css