

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBERLY A PATTERSON
Claimant

APPEAL NO. 13A-UI-10293-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PACKERS SANITATION SERVICES INC
Employer

OC: 08/11/13
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Kimberly Patterson filed a timely appeal from the September 5, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on October 3, 2013. Ms. Patterson participated. Juan Luis Martinez, Site Manager, represented the employer.

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: Kimberly Patterson was employed by Packers Sanitation Services, Inc., as a full-time sanitation worker. The employer provides sanitation services to the Tyson plant in Perry. The employment started in October 2012 and ended on August 14, 2013, when the employer discharged Ms. Patterson for repeated safety violations. Ms. Patterson's work involved of caustic cleaning chemicals. The employer's safety rules required that Ms. Patterson wear safety goggles whenever she was using or was near such chemicals. During the last shift, supervisor observed Ms. Patterson in the chemical cage, where the caustic chemicals were stored and mixed, without her safety goggles on. Ms. Patterson's safety goggles were instead on her hat. Mr. Patterson knew she was required to wear safety goggles when in the chemical cage. Later in the shift, a supervisor observed Ms. Patterson cleaning with the caustic chemicals without wearing her safety goggles. Ms. Patterson had been disciplined in connection with an earlier safety violation wherein she had used a sharp blade without wearing a safety glove and had cut herself. The employer emphasized safety and discussed safety daily with employees including Ms. Patterson.

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.

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).

During the last shift, Ms. Patterson twice violated the safety protocol regarding wearing protective goggles while using or in the presence of caustic chemicals. Ms. Patterson was well aware of the requirement and the purpose of the protocol. Had Ms. Patterson been splashed in

eye with the caustic chemical, she may well have suffered serious, permanent damage to her vision. That would affect not only Ms. Patterson, but would also expose the employer to liability in connection with the injury. The two incidents on the last day were enough alone to establish misconduct in connection with the employment. Nonetheless, they were not the first safety violation. Ms. Patterson's repeated failure to follow the personal protective equipment safety protocol constituted misconduct in connection with the employment that disqualifies her for unemployment insurance benefits. The administrative law judge finds no connection between the discharge and Ms. Patterson's prior allegation of sexual harassment involving a coworker.

Ms. Patterson is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits.

DECISION:

The agency representative's September 5, 2013, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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