

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

APRIL D KHURAM
Claimant

APPEAL NO. 14A-UI-03210-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CBE COMPANIES INC
Employer

**OC: 02/23/14
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated March 18, 2014, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a hearing was held on April 16, 2014, by telephone conference call. The claimant participated personally. Employer participated by Toni Babcock, Human Resources Director. The record consists of the testimony of Toni Babcock; the testimony of April Khuram; Claimant's Exhibits A and B; and Employer's Exhibits 1-3.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a collection agency. The claimant was hired on November 5, 2007, as a full-time collector. Her last day of work was February 20, 2014. She was terminated on February 20, 2014.

The circumstances that led to the claimant's termination began in 2011, when the employer found out that the claimant had been charged with theft. The employer's first notice of the charges was when the charges were published in the newspaper. The claimant informed the employer about the charges. Initially the claimant was given a deferred judgment. That deferred judgment was withdrawn by the Iowa District Court on February 13, 2014, because the claimant was sentenced on January 16, 2013 for a first offense of operating a motor vehicle while intoxicated. The claimant again informed the employer of the status of her criminal case. The employer decided to terminate the claimant because there was now a theft charge on file and according to its policies, termination was required.

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 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 failed to show that the claimant was discharged for a *current* act of misconduct. The claimant and the employer agree that the employer was aware of the theft charges back in 2011 at the time the charges were filed. In other words, theft charges were filed back in 2011 and yet the employer took no action at that time. The reason this is significant is that Ms. Babcock testified that the claimant was terminated because a theft charge was on file. If the claimant was terminated because theft charges were filed, that termination should have taken place back in 2011. Although the deferred judgment was removed from the claimant's file on the theft charge, it was due to a guilty plea on the charge of OWI—First Offense. This change in status of the theft charge does not change the fact that the employer was aware of the charges in 2011. If these charges are the reason for the claimant's termination, clearly the claimant was not discharged for a current act of misconduct. Benefits are therefore allowed, provided the claimant is otherwise eligible.

DECISION:

The decision of the representative dated March 18, 2014, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css