

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HEATHER A MATHIS**  
Claimant

**APPEAL NO. 13A-UI-09404-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GAS-MART USA INC  
EDDY'S**  
Employer

**OC: 07/07/13**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Heather Mathis filed a timely appeal from the August 7, 2013, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on August 29, 2013. Ms. Mathis participated. Bruce Huebner represented the employer and presented additional testimony through Sharone Halouska.

**ISSUE:**

Whether the claimant separated from the employment for a reason that disqualifies them for unemployment insurance benefits. The administrative law judge concludes that Ms. Mathis was discharged for no disqualifying reason.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Heather Mathis was employed by Gas-Mart USA, Inc., d/b/a Eddy's, from April 10, 2013 and last performed work for the employer on June 30, 2013. Eddy's is a gas station and convenience store. Ms. Mathis worked as a part-time cashier. Bruce Huebner is the Store Manager. At the time Mr. Huebner hired Ms. Mathis, he told her she could expect to work three days a week. Prior to June 30, 2013, the employer provided Ms. Mathis with six to 21 hours per week. After Ms. Mathis worked on June 30, 2013, Mr. Huebner elected not to give her any hours on the weekly schedules he posted during the next four weeks. Ms. Mathis would check each week and see that she had been given no hours. When Mr. Huebner received a notice of claim indicating that Ms. Mathis had established a claim for unemployment insurance benefits, he took her name completely off the schedule. On July 27, 2013, Sharone Halouska, Assistant Manager in Training, sent Ms. Mathis a text message indicating that the employer needed her work shirts back. Ms. Halouska and Ms. Mathis were roommates at the time, but had a falling out shortly thereafter. On August 3, Ms. Halouska again told Ms. Mathis that the employer needed her work shirts back. Ms. Mathis had at no time told the employer that she did not want hours on the schedule or that she intended to separate from the employment.

## 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) 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).

The evidence in the record establishes that the employer discharged Ms. Mathis from the employment for no disqualifying reason by electing to give her no hours on the work schedule for four weeks in a row, by then removing her name entirely from the work schedule in response to notice that she had filed a claim for unemployment insurance benefits, and by demanding that she return the work shirts that constituted her work uniform. The evidence indicates that the separation was not based on misconduct on the part of Ms. Mathis. Ms. Mathis is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

**DECISION:**

The agency representative's August 7, 2013, reference 02, decision is reversed. 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.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs