

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

TAMMY J KEDLEY
Claimant

APPEAL NO. 19A-UI-03492-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOHN DEERE CEC – DUBUQUE WORKS
Employer

OC: 03/31/19
Claimant: Appellant (2)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct
Iowa Administrative Code rule 871-24.32(9) – Disciplinary Suspension

STATEMENT OF THE CASE:

Tammy Kedley filed a timely appeal from the April 22, 2019, reference 01, decision that held the she was disqualified for benefits and the employer's account would not be charged for benefits, based on the deputy's conclusion that Ms. Kedley was placed on disciplinary suspension on March 31, 2019 for violation of company rules. After due notice was issued, a hearing was held on May 15, 2019. Ms. Kedley participated personally and was represented by attorney Zeke McCartney. Robert Harkin represented the employer.

ISSUE:

Whether the claimant was suspended 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: Tammy Kedley is employed by John Deere – Dubuque Works as a full-time production worker. Ms. Kedley began the employment in 2004. On April 1, 2019, the employer suspended Ms. Kedley from the employment for 30 days, based on allegations that Ms. Kedley had drove with excessive speed in the employer's parking lot once entering the gate on March 25 and 26, 2019. The posted speed in the parking lot is 15 miles per hour. The employer relied upon allegations made by employees of a third-party security agency and on the employer's review of security surveillance in concluding that Ms. Kedley drove in an unsafe manner in the parking lot. The employer does not know how fast Ms. Kedley was traveling. Though the alleged incidents occurred on March 25 and 26, the employer waited until April 1 to address the matter with Ms. Kedley. At that time, Ms. Kedley denied driving unsafely or with excessive speed. The employer lacks a work rule specific to adhering to posted speed limit signs, but has a general work rule that prohibits unsafe conduct. Following the 30-day suspension, Ms. Kedley returned to work on May 1, 2019 under the same conditions as existed prior to the disciplinary suspension.

REASONING AND CONCLUSIONS OF LAW:

Iowa Administrative Code rule 871-24.32(9) provides as follows:

Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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). 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).

The evidence in the record establishes a disciplinary suspension for no disqualifying reason. The employer presented insufficient evidence to rebut Ms. Kedley’s assertion that she did not operate her vehicle in an unsafe manner on the employer’s campus. The employer had the ability to submit the video surveillance and testimony of the third-party security personnel, but elected not to present such evidence. Ms. Kedley is eligible for benefits in connection with the claim that was effective March 31, 2019, provided she meets all other eligibility requirements. The employer’s account may be charged.

DECISION:

The April 22, 2019, reference 01, decision is reversed. The claimant was suspended for no disqualifying reason. The suspension was effective April 1, 2019. The claimant is eligible for benefits, provided she meets all other eligibility requirements. The employer’s account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs