

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DIXIE J BOCK**  
Claimant

**APPEAL NO. 07A-UI-09549-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DUBUQUE RACING ASSOCIATION LTD**  
Employer

**OC: 09/09/07 R: 04  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Dixie Bock filed a timely appeal from the October 5, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on October 29, 2007. Ms. Bock participated and was represented by Union Representative Wayne Laufenberg. Human Resources Generalist Tami Schnee represented the employer and presented additional testimony through Cage Manager Tami Konzett. Exhibits Two and Three were received into the record.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies her for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Dixie Bock was employed by Dubuque Racing Association as a full-time jackpot fill cashier from August 31, 2001 until September 6, 2007, when Cage Manager Tami Konzett discharged her. The final incident that prompted the discharge occurred on August 30, 2007. On that date, Ms. Bock followed appropriate steps to calculate a jackpot payout, but wrote down an amount that was three dollars more than the appropriate jackpot payout. Pursuant to the employer's jackpot payout protocol, two other employees were charged with reviewing Ms. Bock's work before paying the jackpot to the customer. Each of those additional employees had performed their own calculation of the jackpot payout, but neither caught that Ms. Bock had written down an amount that was three dollars more than the appropriate payout or that she had provided them with cash that represented three dollars more than the appropriate payout. The error was discovered approximately one hour later. The employer was required to submit a report to the Iowa Racing and Gaming Commission. The jackpot payout error also caused Ms. Bock's "bank" to be short three dollars at the end of the shift. Ms. Bock had five jackpot payout errors during her six years of employment. The next most recent jackpot payout error had occurred in June 2006. Ms. Bock's next most recent "bank" variance had occurred on July 27, when she was short \$25.00. Prior to that "bank" variance, the next most recent variance had occurred in August 2006. On the date of the final incident, Ms. Bock paid out 12 jackpots and handled

150 customers during a 10-hour shift. On a “normal shift,” Ms. Bock would pay out 10-20 jackpots and handle 300-400 transactions during an eight-hour shift. Ms. Bock had received written and/or verbal warnings in connection with prior variances and jackpot payout errors.

### **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).

The evidence in the record indicates that on August 30, 2007, Ms. Bock made a mistake in paying out a jackpot. The mistake occurred not in Ms. Bock's calculation of the after-tax jackpot amount, but instead occurred when Ms. Bock wrote down the figure that appeared on her calculator. In other words, it was a scrivener's error. Given the number of transactions Ms. Bock handled, it was reasonable to expect that human error would occasionally occur. That is precisely what happened in connection with the final incident on August 30. The fact that such errors had to be reported to the Iowa Racing and Gaming Commission did not make the errors any more egregious. The administrative law judge concludes that Ms. Bock's conduct on August 30 neither demonstrated negligence nor carelessness. Accordingly, the evidence in the record fails to establish a "current act" of misconduct upon which a disqualifying discharge for misconduct must be based. See 871 IAC 24.32(8).

The administrative law judge further concludes that even if Ms. Bock's error on August 30 had constituted negligence or carelessness, the evidence in the record does not establish carelessness and/or negligence so recurrent as to demonstrate a willful or wanton disregard of the interests of the employer. See 871 IAC 24.32(1)(a).

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Bock was discharged for no disqualifying reason. Accordingly, Ms. Bock is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Bock.

**DECISION:**

The Agency representative's October 5, 2007, reference 01, 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/kjw