

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

QUINN S WOOD
Claimant

APPEAL NO. 16A-UI-08194-JT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLGENCORP LLC
DOLLAR GENERAL
Employer

OC: 07/03/16
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Quinn Wood filed a timely appeal from the July 25, 2016, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on an agency conclusion that Mr. Wood was discharged on July 7, 2016 for misconduct in connection with the employment. This matter was initially set for a telephone hearing on August 15, 2016. On August 10, 2016, Mr. Wood requested an in-person hearing. Mr. Wood resides in Hampton. The workplace was located in Sheffield. Sheffield is about 18 miles from Mason City. After proper notice to the parties at their addresses of record, an in-person hearing was held at 1:00 p.m. on October 25, 2016 at the Workforce Development Center in Mason City. Mr. Wood participated. The employer did not appear for the hearing or request postponement of the hearing. Exhibit A was received into evidence.

On October 25, 2016, the Appeals Bureau erroneously mailed notice to Mr. Wood and to Dolgencorp that the October 25, 2016 hearing would be postponed to a later date. That notice of postponement was mailed in error. Neither party would have received the postponement by the time of the October 25, 2016 appeal hearing. The postponement actually pertained to another pending appeal involving Mr. Wood and a different employer. Dolgencorp's subsequent receipt of the erroneously mailed postponement notice would not relieve the employer of its obligation to appear for the October 25, 2016 appeal hearing.

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: Quinn Wood was employed by Dolgencorp, L.L.C., from September 2015 and last performed work for the employer on July 4, 2016. Mr. Wood worked at the Dollar General Store located in Sheffield. Mr. Wood began the employment as a part-time associate. In January 2016, Mr. Wood was promoted to the position of full-time assistant manager. Store Manager Michael Rose was Mr. Wood's supervisor throughout the employment.

On about June 18, 2016, the lead sales associate at the Sheffield Dollar General Store, told Mr. Rose that she and Mr. Wood had been in a personal relationship. The lead sales associate was subordinate to Mr. Wood once Mr. Wood became a member of management. Mr. Wood denies that the pair had dated. Between May 2016 and June 18, 2016, Mr. Wood and the lead sales associate had communicated via text messaging and Facebook messaging. After the lead sales associate spoke to Mr. Rose on June 18, Mr. Rose discussed the relationship with Mr. Wood. Mr. Rose told Mr. Wood that he would let him know whether Clinton McElwee, Mr. Rose's supervisor, was going to fire Mr. Wood. The conversation between Mr. Rose and Mr. Wood played out between June 18 and July 4, 2016.

On July 4, 2016, Mr. Wood went home early due to illness. Mr. Wood was next scheduled to work on July 5, 2016, but was absent that day due to illness.

On the evening of July 6, 2016, Mr. Rose sent Mr. Wood a text message in which he asked Mr. Wood to appear for a meeting the next day, July 7. Mr. Wood assumed the purpose of the meeting was to discharge him from the employment. Mr. Wood replied that he was not going to drive to Sheffield if he was going to be fired. Mr. Wood resided at a motel in Hampton at the time. Mr. Wood estimates that the distance between Hampton and Sheffield is 18 to 19 miles, but the actual distance is about 11.5 miles. Mr. Wood told Mr. Rose that if he was going to be fired, Dollar General could come to the motel in Hampton to collect its keys. Mr. Rose told

Mr. Wood that he could not come pick up the keys and that the keys must be brought to the store. The employer had the Hampton Police Department collect the keys from Mr. Wood.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

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). 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 employer did not appear for the hearing and did not present any evidence to establish either that Mr. Wood voluntarily quit or that he was discharged for misconduct in connection with the employment. The available evidence establishes that Mr. Wood was discharged on July 6, 2016 for alleged conduct concerning communication between Mr. Wood and a subordinate. Based on the employer’s failure to present evidence to prove misconduct in connection with the employment, the administrative law judge concludes that Mr. Wood was discharged for no disqualifying reason. Mr. Wood is eligible for benefits, provided he meets all other eligibility requirements. The employer’s account may be charged.

DECISION:

The July 25, 2016, reference 01, decision is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer’s account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs