

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CRISTEE A DAVIDS**  
Claimant

**APPEAL NO. 14A-UI-13032-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SIBLEY SUPERMARKET INC  
DAVIDSON SUPER FOODS**  
Employer

**OC: 11/16/14  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Cristee Davids filed a timely appeal from the December 9, 2014, reference 01, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that she had been discharged for misconduct in connection with the employment on November 14, 2014. After due notice was issued, a hearing was held on January 14, 2015. Ms. Davids participated. David Jenson represented the employer and presented additional testimony through Darrel Schaff and Lola Sjogren. Exhibit Three was received into evidence.

**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: Cristee Davids was employed by Davidson Super Foods as assistant produce manager and checker until November 15, 2014, when owners David Jenson and Darrel Schaff discharged her from the employment. Ms. Davids had started with the employer in 1999. The conduct that triggered the discharge occurred on November 14, 2014. Ms. Davids was scheduled to work that day. Ms. Davids spend the day drinking Southern Comfort up until 15 minutes before she was due at work and then appeared at work in an intoxicated state. A customer alerted the employer to the fact that Ms. Davids smelled of alcohol. When the employer asked Ms. Davids whether she had been drinking, Ms. Davids denied that she had and asserted that she would never appear for work after drinking. Ms. Davids continued to have issues with performing her checker duties as a result of being impaired by alcohol. When Ms. Davids was asked to assist with a video rental transaction, she responded with profanity about the need for a coworker “to fucking learn how to check these movies out.” Ms. Davids uttered the remark at the store checkout lanes in front of customers. Ms. Davids uttered two similar remarks. When the owners summoned Ms. Davids to a meeting, Ms. Davids admitted to consuming alcohol and told the owners that she was “buzzed.” When the owners expressed empathy, but told Ms. Davids that they were sending

her home, Ms. Davids commenced yelling at the owners about how they did not understand her situation. Ms. Davids then stormed through the store as she made her exit.

Ms. Davids returned the next day and the employer discharged her at that time.

Ms. Davids attributes her conduct to her desire not to work in produce anymore and to the passing of her husband 13 months earlier.

The employer had a written work rule in an employee handbook that prohibited employees from being under the influence of alcohol at work. The employer does not have a drug testing policy. Ms. Davids concedes that she was intoxicated at work. The employer had another policy that prohibited profanity. Ms. Davids had received the handbook.

### **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.

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).

Ms. Davids' conduct on November 14, 2014 was sufficient to establish misconduct in connection with the employment. Ms. Davids made a decision to consume alcohol to the point of intoxication and to appear at the workplace under the influence of alcohol. Ms. Davids knew that such conduct was not appropriate. The conduct was in violation of the employer's written work rule. Ms. Davids disturbed the employer's operations and negatively impacted the employer's relationship with its customers by uttering vulgar language at the front of the store in the presence of customers in violation of the employer's written work rule. An employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. Henecke v. Iowa Department of Job Service, 533 N.W.2d 573 (Iowa App. 1995). Use of foul language can alone be a sufficient ground for a misconduct disqualification for unemployment benefits. Warrell v. Iowa Dept. of Job Service, 356 N.W.2d 587 (Iowa Ct. App. 1984). Ms. Davids' conduct was in willful and wanton disregard of the employer's interests. Neither Ms. Davids' dissatisfaction with her work duties nor her grief excuses the conduct.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Davids was discharged for misconduct. Accordingly, Ms. Davids is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits.

**DECISION:**

The claims deputy's December 9, 2014, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements. The employer's account shall not be charged for benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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