

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MOIZ S ELAWAD
Claimant

APPEAL NO. 21A-UI-18744-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

REACH FOR YOUR POTENTIAL INC
Employer

OC: 06/20/21
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 23, 2021, reference 01, decision that held the claimant was eligible for benefits, provided he met all other eligibility requirements, and that employer's account could be charged for benefits, based on the Benefits Bureau deputy's conclusion that the claimant was discharged on March 24, 2021 for no disqualifying reason. After due notice was issued, a hearing was held on October 15, 2021. The claimant did not provide a telephone number for the hearing. Bobbi Chipman represented the employer and presented additional testimony through Tara Oberholser. Exhibits 1 through 4 were 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: The claimant was employed by Reach for Your Potential, Inc. (RFYP) as a part-time Direct Care Staff from 2011 until March 24, 2021, when Bobbi Chipman, Human Resources Director, discharged him from the employment. The claimant provided services to RFYP clients in group home residences. Services Coordinator Joe Morgan was the claimant's immediate supervisor. The claimant generally worked a 3:00 p.m. to 10:00 p.m. shift, but also occasionally worked an overnight shift.

On March 1, 2021, Ms. Chipman removed the claimant from the work schedule in response to the claimant not completing service notes for any of the four clients the claimant had assisted during his shift on February 28, 2021. The service notes were supposed to be completed the same day the services were provided or within 24 hours of the services. The employer needed the completed service notes to bill Medicaid for services provided to clients. At the time the employer pulled the claimant from the schedule, the employer told the claimant that he would not be working again until he completed the service notes. On March 1, the claimant told the employer he was in Texas and could not complete the notes at that time. When the employer

asked why the notes had not been completed on the date of service, the claimant did not have a response to the question. On March 1, 2021, and during part of a disciplinary warning a few weeks earlier, the employer had told the claimant that if the issue of not completing service notes in a timely manner continued, the employment would be terminated. The failure to complete the services in connection with the February 28 shift, followed earlier similar concerns, reminders, failure to complete service notes in a timely manner, and a written reprimand.

REASONING AND CONCLUSIONS OF LAW:

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 discharge for misconduct in connection with the employment, based on the claimant's ongoing neglect of duties during the period of February 28, 2021 through March 24, 2021 and an earlier pattern of similar conduct. The claimant's ongoing neglect of essential work duties indicated an intentional and substantial disregard for the interests of the employer and the client's concerned. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits for the period after the entry date of this decision.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer will be charged for the overpaid benefits. Iowa Code § 96.3(7)(a) and (b).

The matter of deciding the amount of the overpayment and whether the amount overpaid should be recovered from the claimant or charged to the employer under Iowa Code § 96.3(7)(b) is remanded to the Benefits Bureau.

DECISION:

The August 23, 2021, reference 01, decision is reversed. The claimant was discharged for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits for the period after the entry date of this decision.

The matter of deciding the amount of the overpayment and whether the amount overpaid should be recovered from the claimant or charged to the employer under Iowa Code § 96.3(7)(b) is remanded to the Benefits Bureau.



James E. Timberland
Administrative Law Judge

November 29, 2021
Decision Dated and Mailed

jet/kmj

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are unemployed for reasons related to COVID-19, may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.