

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KARIE A LAWRENCE
Claimant

APPEAL NO. 15A-UI-09999-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GENESIS HEALTH SYSTEM
Employer

OC: 08/02/15
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Karie Lawrence filed a timely appeal from the August 25, 2015, reference 01, decision that disqualified the claimant for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that Ms. Lawrence had been discharged for misconduct in connection with the employment. After due notice was issued, a hearing was held on September 18, 2015. Ms. Lawrence participated. Brandi Tiesman represented the employer.

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: Karie Lawrence was employed by Genesis Health System as a full-time registrar from 2012 until August 6, 2015, when the employer discharged her for alleged inactivity on July 9 and July 15, 2015 failure to perform her assigned duties. Ms. Lawrence's duties centered on registering patients as they entered the emergency department of the employer's hospital. Most of the work Ms. Lawrence performed involved use of the employer's Cerner software system and was documented through that system. Ms. Lawrence had other duties that did not involve use of the Cerner software system and that would take her away from her computer, sometimes for extended periods. On July 29, Alyssa Munson, Emergency Department Supervisor, generated productivity records that allegedly showed multiple gaps in Ms. Lawrence's productivity on July 9 and 15. The supervisor and a department manager, Amy Eggesdal, reviewed the materials and concluded that Ms. Lawrence had multiple unexplained gaps in her productivity for those two days. When Ms. Lawrence arrived for work on August 6, Ms. Munson and Ms. Eggesdal provided Ms. Lawrence with documentation that terminated her employment and copy of the report that allegedly indicated the gaps in her productivity on July 9 and 15. Ms. Lawrence noted that the report the employer presented to her referenced some duties that were not Ms. Lawrence's duties. The employer did not discuss the report with Ms. Lawrence. Ms. Lawrence did not understand where the report came from or why it referenced duties that were not her duties. The report did not accurately reflect all the work that Ms. Lawrence had

performed for the employer on the days in question. The employer had not previously mentioned concerns with Ms. Lawrence's productivity on July 9 or 15.

On June 26, 2015, the supervisors met with Ms. Lawrence in response to a coworker's complaint that Ms. Lawrence's close working relationship with a coworker made the complaining employee uncomfortable. The employer did not reprimand Ms. Lawrence or otherwise place her on notice that her employment was in jeopardy.

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).

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 presented insufficient evidence, and insufficiently direct and satisfactory evidence, to establish misconduct in connection with the employment. The employer elected not to present testimony from persons with personal knowledge of the alleged incidents that triggered the discharge. The employer did not present sufficient evidence to establish that Ms. Lawrence failed to perform her duties in good faith and to the best of her ability on July 9 and 15, 2015. Even if she did have low productivity on those two days, the employer failed to present sufficient evidence to establish a pattern of such activity or intentional violation of any employer policy. The employer failed to provide a reasonable explanation regarding why, if the employer was concerned about Ms. Lawrence’s productivity, the employer elected to wait until July 29, 2015 to begin considering Ms. Lawrence’s productivity from two to three weeks earlier and then waited another week to make any mention of the issue to Ms. Lawrence. At that late date, it would be unreasonable for the employer to expect Ms. Lawrence to remember how she had used her time on the days in question. The weight of the evidence also indicates that the employer did not inquire.

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

DECISION:

The August 25, 2015, 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css