

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHERYL J CRAIN
Claimant

APPEAL NO. 14A-UI-08037-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JP SENIOR HEALTHCARE LLC

Employer

OC: 07/13/14
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Cheryl Crain filed a timely appeal from the July 30, 2014, reference 01, decision that disqualified her for benefits. After due notice was issued, a hearing was held on August 26, 2014. Ms. Crain participated personally and was represented by attorney James Watson. Mary Brandt, Administrator, 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: Cheryl Crain was employed by J.P. Senior Healthcare, L.L.C., as a full-time dietary aide from September 2013 until July 14, 2014, when Brenda Williams, Food Service Supervisor, discharged her from the employment. The final incident that triggered the discharge occurred on July 14, 2014. The employer alleges that on that day, Ms. Crain yelled at Ms. Williams in the employer's dining room in the presence of residents and other staff. The employer alleges that on the same day, Ms. Crain was rude to the daughter of a resident. On the day and at the time in question, Ms. Crain was assisting with serving lunch to 47 residents. During that time, Ms. Crain ran out of coffee to serve to the residents and Ms. Crain had to scramble to thaw and prepare more coffee. On July 14, Ms. Williams contacted Mary Brandt, Administrator, to report the alleged misconduct.

The next most recent incident that factored into the discharge occurred in April 2014.

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 evidence in the record fails to establish a current act of misconduct. The employer has presented insufficient evidence, and insufficiently direct and satisfactory evidence, to establish that Ms. Crain did indeed yell at Ms. Williams or demonstrate rudeness to a resident's daughter on July 14, 2014. The employer's witness, Ms. Brandt, was not present during the alleged incident and heard about it second-hand. The employer elected not to present testimony from anyone with personal knowledge of the alleged misconduct. The employer had the ability to present testimony from persons with personal knowledge of the incident that triggered the discharge. In the absence of proof of a current act of misconduct, the discharge from the employment would not disqualify Ms. Crain for unemployment insurance benefits. In the absence of proof of a current act of misconduct, the administrative law judge need not consider the earlier incidents of alleged misconduct. Ms. Crain was discharged for no disqualifying reason. Accordingly, Ms. Crain is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The claims deputy's July 30, 2014, reference 01, decision is reversed. The evidence fails to establish a current act of misconduct. 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

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