

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ANGELA BROWN

Claimant

APPEAL NO. 20A-UI-01461-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BICKFORD SENIOR LIVING GROUP LLC

Employer

OC: 01/12/20

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Angela Brown filed a timely appeal from the February 7, 2020, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Ms. Brown was discharged on January 14, 2020 for conduct not in the best interest of the employer. After due notice was issued, a hearing was held on March 10, 2020. Ms. Brown participated. Jacobi Feckers 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: Angela Brown was employed by Bickford Senior Living Group, L.L.C. as a full-time certified medication aide (CMA) until January 14, 2020, when the employer discharged her from the employment for allegedly violating resident rights, for allegedly harassing coworkers, and for allegedly creating a hostile work environment. Ms. Brown began her employment with Bickford in 1998 and became a CMA in 1999. Ms. Brown worked at the employer's 38-bed facility in Marion. Ms. Brown's work hours were 10:30 p.m. to 6:45 a.m. Ms. Brown's duties included performing the shift-change medication count, passing medications to residents, cleaning the kitchen, and assisting residents with activities of daily living, including toileting.

On January 7, 2020, a second-shift employee, Joy Ferguson, reported to Jacobi Feckers, Director, that a particular male resident had expressed concern about his interactions with the overnight staff. The resident had been at the Marion facility for about a month, was suffering from Parkinson's disease, was prone to hallucinating, and was in the habit of consuming alcohol during the overnight shift. The resident had initially alleged that two men were mistreating him during the overnight shift. The employer did not have any male staff on the overnight shift. The resident's concern then metamorphosed into an allegation that two women on the overnight staff would stand at his bed and mock him at night and that the resident had to wait an extended time for the staff to answer his call light. Ms. Brown had done nothing to mistreat the resident.

Ms. Brown had in good faith provided timely and appropriate assistance to the resident as needed, though she thought the resident's alcohol consumption made it more difficult to care for the resident.

On January 7, Ms. Feckers suspended Ms. Brown and another third-shift employee without pay pending her investigation of the resident's complaint. Ms. Feckers interviewed a handful of employees, including Ms. Brown and her third-shift coworker. Ms. Feckers also interviewed the wife of the above-referenced resident. Some of Ms. Brown's coworkers alleged that Ms. Brown on occasion spoke to particular residents in a rude and/or dismissive tone. Ms. Brown is hearing-impaired and is sometimes unaware of how loud she is speaking. One coworker alleged that a resident had told that coworker that Ms. Brown made the resident perform toileting duties that were part of his care plan and that staff were supposed to perform. More than one coworker alleged that Ms. Brown was intimidating in the workplace and that she had spoken disparagingly of the company. Based on the sundry allegations, the employer elected to discharge Ms. Brown from the employment and informed Ms. Brown of that decision on January 14, 2020. Ms. Brown had received no prior reprimands in the course of the 21-year employment.

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 weight of the evidence in the record establishes a discharge for no disqualifying reason. The employer presented insufficient evidence, and insufficiently direct and satisfactory evidence, to rebut Ms. Brown's testimony regarding the matters that factored in the discharge and to meet the employer's burden of proving misconduct in connection with the employment by a preponderance of the evidence. In this case, we have an employee with an unblemished 21-year work record who was discharged based primarily on a second-hand allegation originating from an inherently unreliable source, a resident prone to hallucinating and to other habits that undermined the reliability of his assertions. In response to that suspect allegation, the employer then solicited additional allegations from Ms. Brown's more junior coworkers. The employer elected not to present testimony from a single coworker. The employer presented insufficient evidence to establish that the coworker's allegations were credible and reliable. The weight of the evidence in the record fails to establish any conduct on the part of Ms. Brown that demonstrated a willful and wanton disregard of the employer's interests, of the residents in her care, or of her coworkers. Ms. Brown is eligible for benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits.

DECISION:

The February 7, 2020, reference 01, decision is reversed. The claimant was discharged on January 14, 2020 for no disqualifying reason. The claimant is eligible for benefits, provided she meets all other eligibility requirements. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn