

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SARAH J BONNELL**  
Claimant

**APPEAL NO. 14A-UI-08542-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FRIENDSHIP HAVEN INC**  
Employer

**OC: 07/27/14  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Sarah Bonnell filed a timely appeal from the August 18, 2014, reference 01, decision that disqualified her for benefits. After due notice was issued, a hearing was held on September 8, 2014. Ms. Bonnell participated. Janelle Cravens represented the employer and presented additional testimony through Raquel Jarrard. Exhibits One, Two, Three, A through E, and G 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: Sarah Bonnell was employed by Friendship Haven, Inc. as a part-time resident companion/certified nursing assistant from 2010 until July 30, 2014 when Raquel Jarrard, R.N., Assisted Living Director, discharged her from the employment for speaking to a resident about work matters affecting Ms. Bonnell. Ms. Bonnell worked in the assisted living area of the employer's facility. The employer had a policy that prohibited employees from speaking to residents about work concerns. Ms. Bonnell was well aware of the policy and had just undergone additional training on the policy in June 2014.

On July 30, 2014 another resident companion, Mia Badoo, contacted Ms. Jarrard to complain that the staff kept getting questions from a particular resident, VB, about Ms. Bonnell's work performance. Ms. Bonnell provided assistance to VB on a regular basis and had done so for a couple years. Ms. Badoo reported to Ms. Jarrard that VB was asking why Ms. Bonnell was no longer allowed to work in particular areas of the facility. That same day, Ms. Jarrard went to VB's room to examine VB's arm. VB spoke positively of Ms. Bonnell and told Ms. Jarrard that Ms. Bonnell was concerned about her employment. Ms. Jarrard did not ask VB whether Ms. Bonnell had been discussing her work concerns with VB or whether VB had learned about Ms. Bonnell's work situation from some source other than Ms. Bonnell. Ms. Bonnell had recently applied to transfer to another area of the facility, where she would work under a

different supervisor. On July 30 Ms. Jarrard met with Ms. Bonnell to question her about the matter. Ms. Bonnell denied that she had discussed any work or personal concerns with VB. Ms. Bonnell told the employer that other staff, including schedulers, were aware that Ms. Bonnell was no longer to work in certain areas of the facility and that VB may have received her information about Ms. Bonnell's work situation from other staff. The employer then discharged Ms. Bonnell from the employment.

The employer spoke to Ms. Bonnell in January 2014 regarding a similar concern that Ms. Bonnell had shared personal information with a resident in January 2014. The employer did not issue a formal reprimand in connection with that matter. Ms. Bonnell had indicated at that time that she understood the policy.

#### **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 presented by the employer is problematic. The employer conducted a very limited investigation into the alleged conduct. The employer intentionally decided not to ask VB where she got her information concerning Ms. Bonnell's work situation. The employer's investigation of the matter was limited to Ms. Bando's complaint, Ms. Bonnell's denial, and VB's unsolicited comments about Ms. Bonnell. Despite the limitations of the employer's investigation and evidence, the weight of the evidence indicates that Ms. Bonnell did indeed speak to VB about her work concerns. The weight of the evidence indicates that Ms. Bonnell had developed a friendship of sorts with VB. VB's comments to Ms. Jarrard suggested direct communication with Ms. Bonnell concerning the matters in question. Ms. Bonnell's assertion that she did not share her work concerns with VB is undermined by the secretive, circuitous manner in which Ms. Bonnell enlisted VB's assistance with the unemployment insurance appeal and the note from VB that is not credible in the face of the other evidence. The weight of the evidence indicates that Ms. Bonnell did indeed knowingly and intentionally violate the employer's policy that prohibited her from sharing personal or work concerns with residents of the facility. In violating that policy, Ms. Bonnell upset the resident and disrupted the workplace. Ms. Bonnell's conduct demonstrated a willful disregard of the employer's interests in providing an orderly workplace and a tranquil residence for seniors.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Bonnell was discharged for misconduct. Accordingly, Ms. Bonnell 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 August 18, 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 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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