

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER L TIFFANY

Claimant

APPEAL NO. 10A-UI-09185-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**GOOD SAMARITAN SOCIETY INC
EVANGELICAL GOOD SAMARITAN
SOCIETY**

Employer

OC: 05/16/10

Claimant: Respondent (1)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct
871 IAC 24.26(21) – Quit in Lieu of Discharge

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 18, 2010, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on August 12, 2010. Claimant Jennifer Tiffany participated. James Sewick, Executive Director, represented the employer and presented additional testimony through Kristy Roney, Executive Assistant. The hearing in this matter was consolidated with the hearing in Appeal Numbers 10A-UI-09184-JTT and 10A-UI-09186-JTT. Exhibits One, Two, and Four through Six 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: Jennifer Tiffany was employed by Good Samaritan Society as a part-time dietary aide from 2007 until May 14, 2010, when she resigned in lieu of being immediately discharged from the employment. On May 13, 2010, Ms. Tiffany had been assisting with serving salads to residents in the dining room when she ignored a resident's request for French dressing. Ms. Tiffany initially believed the employer only had ranch dressing for the salad, but continued to ignore the resident's request even after she became aware there was other dressing available. The resident complained to the Executive Director, James Sewick, who spoke with Ms. Tiffany on May 14, 2010. Ms. Tiffany acknowledged her error. Mr. Sewick gave Ms. Tiffany the option of resigning or being discharged from the employment. Ms. Tiffany elected to resign and submitted a written resignation memo.

On January 15, 2009, Dietary Manager Elaine Kelly had issued a written reprimand to Ms. Tiffany after Ms. Tiffany responded to a resident's request for milk with, "I'll get it when I'm ready." On October 13, 2009, Ms. Kelly had issued a written reprimand to Ms. Tiffany after

Ms. Tiffany ceased passing ice cream before all the residents had been served. On October 30, 2009, Ms. Kelly had issued a reprimand to Ms. Tiffany based on an allegation that Ms. Tiffany had been “demanding and rude” to a student nursing assistant.

Ms. Tiffany has some evident cognitive limitations. Ms. Tiffany graduated from high school. Ms. Tiffany received special education services throughout her educational experience.

REASONING AND CONCLUSIONS OF LAW:

Iowa Administrative Code rule 871 IAC 24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

- (21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

In analyzing quits in lieu of discharge, the administrative law judge considers whether the evidence establishes misconduct that would disqualify the claimant for unemployment insurance benefits.

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.

871 IAC 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.

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 indicates that Ms. Tiffany was negligent in performing her duties on May 13, 2010, when she ignored the resident's request for a different salad dressing. Ms. Tiffany's next most recent reprimands date from October 2009, when Ms. Tiffany negligent in failing to serve ice cream until all residents had been served and when Ms. Tiffany was somewhat short in response to a resident's request for milk. Despite these two instances of negligence, the evidence fails to establish a pattern of negligence indicating a willful or wanton disregard of the employer's interests. In addition, the evidence fails to establish any intentional misconduct. In addition, Ms. Tiffany's cognitive abilities are a mitigating factor.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Tiffany involuntarily separated from the employment for no disqualifying reason. Accordingly, Ms. Tiffany is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Tiffany.

DECISION:

The Agency representative's June 18, 2010, reference 02, decision is affirmed. The claimant involuntarily separated from the employment 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/pjs