

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRISTINA R LEEKS-LANE**

Claimant

**APPEAL NO. 11A-UI-01628-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**YOUNG HOUSE FAMILY SERVICES INC**

Employer

**OC: 01/09/11**

**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the February 4, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 4, 2011. Claimant participated. Sue Beer represented the employer and presented additional testimony through Lorie Bray. Exhibits One through One through 10, A and B were receive 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: Christina Leek-Lane was employed by Young House Family Services as a full-time case worker from 2007 until January 7, 2011, when Program Director Lorie Bray, Human Resources Director Sue Beer and Administrator Jack Escorcia discharged her from the employment for dishonesty and for violating the employer's professional and personal boundaries policy. Ms. Bray was Ms. Leeks-Lane's immediate supervisor. The employer contracts with the Department of Human Services to provide social work services to at-risk individuals and families.

On January 5, 2011, a middle school principal reported to Ms. Bray that he had seen a photo of Ms. Leeks-Lane with the mother of a Young House Family Services client. The photo was taken at the home of Ms. Leeks-Lane's in-laws on New Year's Eve. The photograph was posted on the facebook page belonging to the client's mother. Ms. Bray contacted Ms. Leeks-Lane about the photograph and Ms. Leeks-Lane denied knowledge of the photograph. Ms. Leeks-Lane intentionally misrepresented to Ms. Bray that she had been home with her children on New Year's Eve. Ms. Bray then located the photograph and contacted Ms. Leeks-Lane. Ms. Leeks-Lane agreed to come to the workplace to review the photo. Ms. Leeks-Lane met with Administrator Michael Siegfried to review the photo. Ms. Leeks-Lane denied prior knowledge of the existence of the photo.

On January 6, Ms. Bray and Ms. Beer met with Ms. Leeks-Lane. Ms. Leeks-Lane admitted during the meeting that she had lied about her whereabouts on New Year's Eve. Ms. Leeks-Lane explained to the employer that she had lied because she had a protective order prohibiting her husband from near her and did not want law enforcement authorities to know that she was breaking the no contact order to be with her husband. Ms. Leeks-Lane had obtained a civil protective order outside the context of any criminal prosecution to protect herself from her husband when he consumed alcohol. At the end of the January 6 meeting, Ms. Bray and Ms. Beer suspended Ms. Leeks-Lane pending a decision regarding whether she would be allowed to continue in the employment.

The employer considered Ms. Leeks-Lane's presence at the New Year's Eve party at the same time the client's mother was present to be a violation of the employer's Policy for Professional and Personal Boundaries. The employer considered the mother of the client to be a person with whom Ms. Leeks-Lane was to maintain appropriate boundaries under the policy. This was despite the employer's distinction in other documentation between clients and parents. Ms. Leeks-Lane had received training in the policy and had formally acknowledged the policy.

### **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.

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 weight of the evidence in the record establishes that Ms. Leeks-Lane was indeed intentionally dishonest with the employer during the course of the employer's investigation into whether she had had personal contact with the mother of a client that would violate the employer's policy regarding personal and professional boundaries. The fact that Mr. Leeks-Lane was intentionally dishonest because she did not want to alert law enforcement to her conspiracy to violate a no-contact order she had requested in no manner mitigates the intentional dishonesty. At minimum, Ms. Leeks-Lane was dishonest in intentional misrepresenting to the employer that she was at home on New Year's Eve. The weight of the evidence indicates that the dishonesty went beyond that. Ms. Leeks-Lane's dishonesty, given the nature of her position, undermined the trust and integrity that were essential for her to perform her duties as a social worker. The dishonesty constituted misconduct in connection with the employment that disqualifies Ms. Leeks-Lane for unemployment insurance benefits. Ms. Leeks-Lane 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 paid to Ms. Leeks-Lane.

**DECISION:**

The Agency representative's February 4, 2011, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until

she has worked in and been paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements. The employer's account will not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs