

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**JORDAN N LUCKEL**  
Claimant

**ABILIT HOLDINGS (LAWTON) LLC**  
Employer

**APPEAL NO. 22A-UI-08404-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/13/22  
Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

On April 4, 2022, the employer filed a timely appeal from the March 25, 2022 (reference 01) decision that allowed benefits to the claimant, provided the claimant met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on February 3, 2022 for no disqualifying reason. After due notice was issued, a hearing was held on May 16, 2022. Jordan Luckel (claimant) did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Rosalind Perez of Oasis Paychex represented the employer and presented testimony through Charlys Folk. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant, which record reflects no benefits have been disbursed in connection with the February 13, 2022 claim. Exhibits 1 through 9 (from the packet marked Exhibit 1, pages 1 of 9 through 9 of 9) were received into evidence.

**ISSUES:**

Whether the claimant was discharged for misconduct in connection with the employment.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Abilit Holdings (Lawton), L.L.C. is an assisted living facility that includes a memory care unit. Jordan Luckel (claimant) worked for the employer during two distinct periods. The most recent period of employment began in September 2021. During the most recent period of employment, the claimant worked as a full-time Resident Assistant assigned to the 2:00 p.m. to 10:00 p.m. shift. The Resident Assistant duties were comparable to and consistent with Certified Nursing Assistant (C.N.A.) duties. Charlys Folk, Director, was the claimant's supervisor. At the start of the most recent employment, the employer provided training in the Resident Assistant duties and had a nurse review the claimant's performance to ensure the claimant has mastered the duties. The claimant last completed a shift on Friday, January 28, 2022.

On Monday, January 31, 2022, Ms. Folk suspended the claimant in response to conduct that occurred during the claimant's Friday, January 28 shift. During the shift, the claimant was assigned to assist the 14 residents in the assisted living area of the facility. Another Resident Assistant, Sheri Schrank, was assigned to assist the 10 residents in the memory care unit. The claimant and Ms. Schrank were the only staff at the facility during the shift. A nurse was on-call and available by telephone. During the January 28, 2020, the claimant neglected a particular resident on three separate occasions. In the first instance, the resident's call light was on for 18 minutes before the claimant responded and reset the call light. The employer's protocol required that the claimant respond to the call light within five minutes. There is no indication the claimant was assisting other residents during the times when she delayed responding to the resident in question. The employer does not know what the resident needed the first time the resident used the call light during the shift.

In the second instance on January 28, the claimant took a full hour to respond to the resident's call light. When the claimant responded, she found the resident on the floor where the resident had fallen. The resident had a fractured humerus. Diagnosis of the fracture was delayed due to the claimant's multiple deviations from the established fall response protocol. Pursuant to the protocol, the claimant was required to call the on-call nurse for an over-the-phone assessment prior to moving the resident. Ms. Schrank, the Resident Assistant in the memory care unit, came to see why the claimant was delaying response to the resident's call light. Ms. Schrank reminded the claimant that the claimant needed to call the nurse before moving the resident and advised against moving the resident before then. The claimant disregarded the protocol and the coworker's advice. Instead the claimant single-handedly moved the resident from the floor and back into bed. The claimant thereafter delayed responding to the same resident's call light for 40 minutes.

After the resident fell, the claimant called Ms. Folk, the Director. The claimant cursed and said the employer needed to staff three Resident Assistants until 10 p.m. The employer's protocol was to staff two Resident Assistants per shift until the combined census reached 25 residents. One resident would be assigned to the memory care unit and the other to the assisted living area. When the claimant disclosed to Ms. Folk that the resident had fallen, Ms. Folk asked whether the resident was injured. The claimant replied, "I don't think so." Ms. Folk reminded the claimant to complete an incident report. Pursuant to the protocol, fall reports were to be completed by the end of the shift during which the fall occurred. The claimant did not complete a fall report prior to leaving at the end of her shift.

On Saturday, January 29, 2022, the resident who fell the previous evening complained about pain in her arm, was transported to the emergency room by ambulance, and was diagnosed with the fractured humerus. The claimant did not complete an incident report until Sunday, January 30, 2022. The resident who fell, or the resident's family, elected to move the resident to another facility.

On Monday, January 31, 2022, Ms. Folk spoke with the claimant when the claimant arrived for her shift. During that conversation, the claimant asserted she had responded to all call lights in a timely manner during the January 28, 2022 shift. Ms. Folk suspended the claimant pending further investigation. When Ms. Folk pulled the call light records, she discerned the claimant had been intentionally dishonest about responding to the call lights in a timely manner.

On February 3, 2022, Ms. Folk discharged the claimant from the employment in response to the January 28 conduct, the delayed filing of the incident report, and the intentional dishonesty during the January 31 meeting.

The claimant established an original claim for benefits that was effective February 13, 2022. Iowa Workforce Development has not disbursed benefits in connection with the claim.

### **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 Iowa Admin. Code r.871 -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 claimant was discharged for misconduct in connection with the employment. The evidence in the record establishes multiple ways in which the claimant acted with willful and wanton disregard of the employer's interests on January 28, 2022 and in the days that followed. The weight of the evidence indicates the claimant knowingly and intentionally neglected the resident in question by failing to timely respond to three call light requests for assistance. The claimant's neglect of duties led to the resident in question suffering a fall and fractured bone and thereafter suffering pain and unnecessary delay of treatment. The claimant knowingly and intentionally failed to follow the established protocol for assessing the fallen resident prior to moving the resident. The claimant knowingly, intentionally and unreasonably failed to comply with the employer's reasonable directive to complete a fall report in a timely manner. The claimant was knowingly and intentionally dishonest on January 31, 2022, when the claimant asserted to the employer that she had responded to all call lights in a timely manner. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

Because no benefits have been paid in connection with the claim, there is not overpayment of benefits to address.

**DECISION:**

The March 25, 2022 (reference 01) decision is REVERSED. The claimant was discharged on February 3, 2022 for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.



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James E. Timberland  
Administrative Law Judge

June 21, 2022  
Decision Dated and Mailed

jet/mh