

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOYCE A PARKER**  
Claimant

**APPEAL NO. 15A-UI-01904-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ACT FOR HEALTH INC**  
**PROFESSIONAL CASE MANAGEMENT**  
Employer

**OC: 01/18/15**  
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the February 2, 2015, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant had been discharged for no disqualifying reason. After due notice was issued, a hearing was held on March 17, 2015. Claimant Joyce Parker participated. Paul Grossman, Human Resources Recruitment Coordinator, represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant.

**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: The employer provides home healthcare services to former nuclear industry and uranium processing workers. Joyce Parker was employed by Act for Health, Inc., Professional Case Management, as a Licensed Practical Nurse from 2011 until January 16, 2015, when Angela Graf, R.N., Clinical Operations Coordinator, discharged her from the employment. Ms. Graf was located at the employer's office in Colorado. Ms. Parker performed her work duties in Fort Madison, Iowa. Though the employer called the employment p.r.n., or as needed, Ms. Parker worked full-time or near full-time hours.

Toward the end of the employment, Ms. Parker had two clients for whom she provided in home nursing services. Ms. Parker's primary client was a man who had advanced chronic obstructive pulmonary disease (COPD) and had a broken foot that required use of a motorized scooter. The client also suffered from anxiety that required anti-anxiety medication. Ms. Parker's duties included assisting the client with nebulizer breathing treatments, bathing, meal preparation, grocery shopping, and laundry. When assisting with bathing, Ms. Parker would wash the client from the waist up. The client, when able and willing, would then need to maneuver from his

scooter to a bathing seat in a walk-in shower and bath the remainder of his body. During the last several weeks of Ms. Parker's employment, the client had foregone bathing himself below the waist. By January 13, 2015, the client had acquired a significant body odor that was a concern to Ms. Parker and the other nurses who provided care to him.

The final incident that prompted the employer to discharge Ms. Parker from the employment occurred on January 13, 2015, when Ms. Parker attempted to coax the client into bathing. Ms. Parker told the client that he was starting to acquire a body odor and that she hoped the client would allow her to assist him with bathing that day. The client said it was "too damn cold" to bathe. Ms. Parker located a small space heater to warm the bathroom and offered to provide the client with a dose of his anxiety medication to make it easier for him to bathe.

Soon thereafter, the client asserted to other nurses and to the case manager, Deb Haley, that Ms. Parker had told him that he "stunk like an old man." Ms. Parker denies making that statement. Ms. Parker later told Ms. Haley that she had been the only nurse "with balls" to speak to the client about his body odor. The client requested that Ms. Parker be removed from his case. Ms. Haley reported the matter to Ms. Graf. Ms. Graf spoke to the client, to Ms. Haley, to other nurses and to Ms. Parker concerning the incident. The employer removed Ms. Parker from the client's case and then discharged Ms. Parker from the employment. The employer cited a work rule that prohibited abusive language directed at clients.

In making the decision to discharge Ms. Parker from the employment, the employer considered a reprimand issued in 2013. At the time, Ms. Parker was assigned to care for a client whose pet dog had recently passed away. Ms. Parker told the client that she was going to get a dog. In July 2013, Ms. Parker brought the 1.5 pound puppy to the client's home and allowed the client to hold the dog. The client enjoyed the company of the dog. Ms. Parker continued to bring the puppy with her to the client's home for a couple months until someone, presumably another nurse, complained to the employer about the practice. Ms. Graf counseled Ms. Parker that it was unprofessional and a violation of the employer's work rules to bring the pet to work with her. Ms. Parker discontinued the practice. The client contacted the employer to request that Ms. Parker be allowed to continue to bring the puppy. The employer asserted that Ms. Parker had solicited the client to make the request, but Ms. Parker had not done so.

Ms. Parker established a claim for benefits that was effective January 18, 2015 and received \$832.00 in benefits for the three-week period of January 18, 2015 through January 31, 2015.

The employer participated in the January 30, 2015 fact-finding interview through Paul Grossman, Human Resources Recruitment Coordinator.

#### **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 employer has presented insufficient evidence, and insufficiently direct and satisfactory evidence, to establish misconduct in connection with the employment. The employer presented no testimony from persons with personal knowledge of the two matters that factored in the discharge decision. The employer presented insufficient evidence to rebut Ms. Parker's assertion that she did not tell the client that he "stunk like an old man." Even if Ms. Parker had uttered the particular comment, the evidence would not indicate any intent to abuse the client and would, at most, indicate a good faith error in judgment. Because the evidence fails to

establish misconduct in connection with the final incident, and because the prior incident dates from 2013, the evidence fails to establish a current act of misconduct. Accordingly, the administrative law judge need not consider the prior incident. Nonetheless, the evidence is insufficient to establish misconduct in connection with that prior incident. The evidence indicates that Ms. Parker was merely attempting to meet the client's need for companionship, acted at the client's request, and that there was no intent to act in an unprofessional manner or otherwise violate the employer's work rules. The evidence is insufficient to support the assertion that Ms. Parker encouraged the client to contact the employer. The 2013 incident was also, at most, a good faith error in judgment.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Parker was discharged for no disqualifying reason. Accordingly, Ms. Parker is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

**DECISION:**

The February 2, 2015, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs