

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

YVONNE TETTER

Claimant

APPEAL NO. 07A-UI-06472-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE METH-WICK COMMUNITY INC

Employer

**OC: 06/03/07 R: 03
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The Meth-Wick Community filed a timely appeal from the June 22, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on July 17, 2007. Claimant Yvonne Tetter participated. Donna Jacobi, Director of Human Resources, represented the employer and presented additional testimony from Linda Scholts, L.P.N., Arbor Place Health Supervisor. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits One through Nine into evidence.

ISSUE:

Whether the claimant was discharged for a current act of 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: Yvonne Tetter was employed by The Meth-Wick Community as a part-time personal care giver from January 1, 2006 until June 7, 2007, when Linda Scholts, L.P.N., Arbor Place Health Supervisor, discharged her for sleeping on the job. Ms. Scholts was Ms. Tetter's immediate supervisor. The final such incident occurred on May 6, 2007, at a time when Ms. Scholts was away from the workplace on a medical leave. Ms. Scholts commenced her leave on April 13 and returned on May 29, 2007. While Ms. Scholts was on leave, Robin Mixdorf, President, designated Deb Corrigan, L.P.N., as Ms. Tetter's immediate supervisor. Ms. Tetter's May 6 sleeping behavior came to the attention of Ms. Corrigan on May 7 and Ms. Corrigan issued a written reprimand on that day. Ms. Corrigan warned Ms. Tetter that further similar conduct would result in Ms. Tetter being discharged from the employment. At the time Ms. Corrigan issued the May 7 reprimand, she was unaware that Ms. Tetter had received prior reprimands for similar sleeping. Sue Schmidt, the new Director of Health Services, was also aware of Ms. Tetter's May 6 conduct, but elected to wait until Ms. Scholts returned from leave to further address Ms. Tetter's conduct. Ms. Scholts returned from her leave on May 29 and discharged Ms. Tetter on June 7, nine days later.

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 evidence in the record fails to establish a current act of misconduct. The evidence indicates that Ms. Tetter's final incident of sleeping on the job came to the attention of the employer on May 7. The evidence indicates that the employer initially addressed the matter with a written reprimand. The evidence indicates that one month later, on June 7, the employer advised Ms. Tetter that she would be discharged based on the May 6 conduct and the prior similar conduct. However, the May 6 conduct no longer constituted a "current act" one month after the employer first learned of the incident. See 871 IAC 24.32(8).

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

DECISION:

The Agency representative's June 22, 2007, 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw