

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LAGRONE, KIANTE, S**  
Claimant

**APPEAL NO. 10A-UI-13957-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARMELITE SISTERS FOR THE AGED**  
Employer

**OC: 09/12/10  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the October 8, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 16, 2011. Claimant participated and presented additional testimony through Breshanda Watkins. Heather Warren, Human Resources Assistant, represented the employer and presented additional testimony through Laura Williams, Human Resources Manager, and Angel Lyle, Service Director. Exhibits One through Seven 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: Kianté Lagrone was employed by Carmelite Sisters for the Aged, d/b/a The Kahl Home as a part-time dietary aide from December 2008 until September 15, 2010, when Heather Warren, Human Resources Assistant, and Laura Williams, Human Resources Manager, discharged her from the employment.

The final incidents that triggered the discharge date September 10, 2010 and concern the personality conflict with another dietary aide, Lateece Willits. A cook contacted Heather Warren, Human Resources Assistant, and asserted that Ms. Lagrone had approached Ms. Willits in a dining room, pushed her and invited her to a fight. When Ms. Lagrone left work that day, Ms. Willits and companions in a van taunted Ms. Lagrone as she got in to her car and then followed her for a while in the van. Ms. Lagrone reported the conduct to the employer. Ms. Lagrone was scheduled to be off work the next day. One or more coworkers alleged to the employer that Ms. Lagrone and Ms. Willits engaged in a fight a few blocks from the employer's facility. Regarding the alleged off-campus fight, the employer interviewed other employees about the matter, but never spoke with anyone who indicated they observed such a fight between Ms. Lagrone and Ms. Willits. Both Ms. Lagrone and Ms. Willits denied the alleged

dining room incident and the alleged off-campus fight. The employer decided to discharge both from the employment out of concern for maintaining a safe work environment.

In making the decision to discharge Ms. Lagrone from the employment, the employer considered prior matters alleged to have occurred between mid-February and the beginning of April 2010. On February 13, Ms. Lagrone contacted Ms. Warren with a complaint about a certified nursing assistant. In the course of looking into that matter, the employer spoke with a supervisor, who alleged that Ms. Lagrone and the other employee had engaged in a shouting match in front of residents. On or about March 23, the employer counseled Ms. Lagrone after Ms. Willits alleged that Ms. Lagrone had displayed offensive body language toward Ms. Willits. On April 1, the employer counseled Ms. Lagrone after Ms. Willits alleged that Ms. Lagrone had pushed a milk cart that Ms. Willits was using.

### **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.

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 § 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 failed to present sufficient evidence, and sufficiently direct and satisfactory evidence, to establish misconduct in connection with the two final incidents from September that triggered the discharge. The evidence concerning those matters consists almost exclusively of allegations of misconduct with little actual proof of the same. The employer, during its own investigation, was unable to find anyone who indicated they had actually observed Ms. Lagrone and Ms. Willits fighting off-campus. The employer failed to present testimony from the cook who allegedly witnessed an exchange between Ms. Lagrone and Ms. Willits in the dining room. The administrative law judge cannot assume the credibility or reliability of the information the employer received primarily as hearsay within hearsay. While the discretion to end the employment resided with the employer, the evidence fails to establish a current act of misconduct necessary to disqualify Ms. Lagrone for unemployment insurance benefits. In the absence of a current act of misconduct, the administrative law judge need not consider the prior alleged incidents or whether they constituted misconduct.

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

**DECISION:**

The Agency representative's October 8, 2010, reference 01, decision is reversed. 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