

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARILYN K CORBETT**  
Claimant

**APPEAL NO. 13A-UI-07715-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALLEN MEMORIAL HOSPITAL**  
Employer

**OC: 06/02/13  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Marilyn Corbett filed a timely appeal from the June 24, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 5, 2013. Ms. Corbett participated personally and was represented by attorney Charles Showalter. Kami Petigoue represented the employer and presented testimony through Steve Sesterhenn. Exhibits One, A and B 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: Marilyn Corbett, R.N., was employed by a Allen Memorial Hospital as a full-time case manager from January 2013 until May 28, 2013, when the employer discharged her from the employment for alleged falsification of her employment application. Ms. Corbett had completed an on-line application to obtain the most recent employment. Ms. Corbett had certified the completeness of her application at the time she submitted it electronically. Ms. Corbett had worked for the employer for a substantial period during the 1980s and had included that employment in the prior employment section of her application. Ms. Corbett had worked for the employer for three days in 2005. Ms. Corbett knowingly omitted reference to that brief employment from her application for the most recent period of employment because she thought it was inconsequential. The nature of the 2005 separation is in dispute. The employer asserts that Ms. Corbett was discharged. Ms. Corbett asserts she voluntarily quit the 2005 employment. Aside from the omission of the 2005 three-day employment, there were no other defects in Ms. Corbett's application. At the time Ms. Corbett made her most recent application to Allen Memorial Hospital, she had recently worked for another hospital affiliated with Allen Memorial Hospital. No one associated with Ms. Corbett's most recent hiring had any reason to doubt her credentials or her integrity. Ms. Corbett satisfactorily performed her case manager duties throughout the 2013 employment.

The supervisor who had been involved in Ms. Corbett's three-day 2005 employment, Milda Mullesch, returned to Allen Memorial Hospital toward the end of Ms. Corbett's most recent employment. Ms. Mullesch recognized Ms. Corbett from the 2005 brief employment. Ms. Mullesch initiated an investigation into Ms. Corbett's prior periods of employment and the employer thereby became aware of the three-day employment in 2005. The employer had its own personnel record of that employment, but had not thought to look at its record of Ms. Corbett's prior employment until being prompted to do so by Ms. Mullesch. Under the employer's policies, Ms. Corbett would not be eligible for rehire if she had previously been discharged from the employer. However, the employer also had a policy of disregarding prior employment with Allen Memorial Hospital if the prior employment was more than a couple years before the most recent application. Prior to the investigation and discharge, Ms. Corbett had not known that the employer had documented her 2005 separation as a discharge or that it would bar her from returning to Allen Memorial Hospital.

On May 28, 2013, the employer discharged Ms. Corbett solely based upon the failure to list the 2005 three-day employment on her on-line application.

#### **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) alone. 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).

Iowa Administrative Code section 871 IAC 24.32(6) provides as follows:

False work application. When a willfully and deliberately false statement is made on an Application for Work form, and this willful and deliberate falsification does or could result in endangering the health, safety or morals of the applicant or others, or result in exposing the employer to legal liabilities or penalties, or result in placing the employer in jeopardy, such falsification shall be an act of misconduct in connection with the employer.

The evidence in the record fails to establish misconduct in connection with the employment that would disqualify Ms. Corbett for unemployment insurance benefits. Though the omission of the three-day 2005 employment was intentional, it was not done with an intent to deceive the employer. The omission had no impact whatsoever on Ms. Corbett's work performance. The omission did not endanger the health, safety or morals of Ms. Corbett or anyone else. The omission did not expose the employer to liabilities or penalties or otherwise place the employer in jeopardy. While the employer asserts it would not have hired Ms. Corbett if it had known of the brief 2005 employment, the administrative law judge concludes that assertion is questionable. The employer had a conflicting policy of not considering prior employment with Allen Memorial Hospital that predated the most recent application by more than a couple years. In any event, whether the employer would have rehired Ms. Corbett is not the deciding factor. Moreover, the evidence indicates that Ms. Corbett presented the appropriate credentials, including recent employment with an affiliated facility, was interviewed to establish her fit for the position, and that the employer was on notice of at least one earlier employment. The evidence indicates that Ms. Corbett successfully completed her duties up to the time the new supervisor

took steps to bring the employment to an end. Though Ms. Corbett's position was one that required trust, the omission of the brief 2005 employment in no way undermined the employer's ability to trust her and the employer assert that it did is a stretch. Ms. Corbett was discharged for no disqualifying reason. Accordingly, Ms. Corbett is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

**DECISION:**

The Agency representative's June 24, 2013, 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