

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES Q BOATMAN
Claimant

APPEAL NO. 15A-UI-13595-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

APRIA HEALTHCARE INC
Employer

OC: 11/08/15
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 November 25, 2015, reference 01, decision that allowed benefits to the claimant provided he 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 on November 9, 2015 for no disqualifying reason. After due notice was issued, a hearing was held on January 4, 2016. Claimant James Boatman participated. David Moehle of ADP Unemployment Group represented the employer and presented testimony through Shawn Stevens. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1 through 16 into evidence. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

ISSUES:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer delivers oxygen tanks and other home health care equipment to patients' homes. James Boatman was employed by Apria Healthcare, Inc., as a full-time Patient Service Technician from 2013 until November 9, 2015, when Davenport Branch Manager Sharon Arthur discharged him from the employment for allegedly failing to make scheduled stops at patients' homes and for allegedly falsely documenting that he had made the stops. Mr. Boatman's immediate supervisor was Branch Logistics Supervisor Shawn Stevens. Mr. Boatman was based out of the Davenport branch and was assigned a delivery territory that extended north to Dubuque and south to Muscatine. Mr. Boatman's assigned delivery territory also extended into an adjacent area in western Illinois. Mr. Boatman would use the employer's truck to make his

deliveries. The employer assigned Mr. Boatman a Nextel phone onto which a GPS application was loaded. The Nextel phone would transmit location data every two minutes. The employer utilizes a third party provider, Logistics Center of Excellence (LCE), to monitor the GPS data and to bring irregularities reflected in the GPS data to the employer's attention.

On November 3, 2015, LCE reported to Ms. Arthur alleged irregularities in the GPS data pertaining to Mr. Boatman's delivery route on October 2, 6, 7, 8, 15, 20, 21, and 22. The data suggested that Mr. Boatman had skipped a stop on October 22 and had skipped additional stops on other days in the additional dates. Mr. Boatman had in fact not skipped any stops. No patients had contacted the employer to assert that Mr. Boatman had failed to appear on any of the days in question. The data provided by LCE showed Mr. Boatman's proximity to scheduled stops and the amount of time he spent in the vicinity of scheduled stops. However, the data from LCE did not show the particular time Mr. Boatman was at various points in his route. Mr. Boatman was required to report to LCE the time he stopped at a designated stop and the time he left the designated stop. Mr. Boatman had properly reported his stops for the days in question. Mr. Boatman made the appropriate report to the LCE. If Mr. Boatman stopped at a patient's home and the patient was not home, Mr. Boatman was required to leave a card at the patient's door. Mr. Boatman had done that for the days in question. The card included the phone number for the employer. For one of the stops that LCE reported to the employer as a skipped stop, LCE provided a map showing that Mr. Boatman was .02 miles from the stop and implied that he had not made the stop. Mr. Boatman had indeed made the stop. Despite indications that the LCE data was not reliable, the employer proceeded with discharging Mr. Boatman from the employment.

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 weight of the evidence in the record fails to establish a current act of misconduct. The weight of the evidence indicates that the data LCE provided to the employer was unreliable and erroneous. The weight of the evidence establishes that Mr. Boatman did indeed perform his duties during the October 2-22, 2015 period in question and did not generate false documentation.

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

DECISION:

The November 25, 2015, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs