

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANGELA M CORBIN**  
Claimant

**APPEAL NO. 11A-UI-04224-JT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DIAL SILVERCREST CORP**  
Employer

**OC: 02/27/11  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Angela Corbin filed a timely appeal from the March 28, 2011, reference 01, decision that denied benefits. After due notice was issued, an in-person hearing was held on May 10, 2011. Ms. Corbin participated. The employer did not appear for the hearing or request postponement of the hearing. Exhibits A through E 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: Angela Corbin was employed by Dial Silvercrest Corporation as a full-time certified medication aide from 2009 until March 4, 2011, when the employer discharged her from the employment. At the time of discharge, the employer alleged Ms. Corbin had made disparaging remarks about a supervisor. Ms. Corbin denied the allegation, asked to know who her accuser was, and asked for more particulars about the allegation. Aside from reading the termination notice document, the employer declined to provide additional information. The employer had issued a similar reprimand in December 2010 and declined to provide details. At the time the employer discharged Ms. Corbin from the employment, Ms. Corbin had recently been approved for intermittent leave under the Family and Medical Leave Act based on a high-risk pregnancy. In July 2010, Ms. Corbin's doctor had imposed a 10-pound lifting restriction. Though Ms. Corbin had provided appropriate notice to the employer of the lifting restriction, the employer often disregarded the medical restriction. Ms. Corbin had to repeatedly petition the facility administrator for final approval of her FMLA application, which approve came only after Ms. Corbin insisted the administrator contact the employer's corporate office about the matter.

## 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 employer failed to appear for the hearing and thereby failed to present any evidence whatsoever to support the allegation that Ms. Corbin was discharged for misconduct. The evidence in the record fails to establish that Ms. Corbin made the disparaging remarks attributed to her or that she otherwise acted contrary to the interests of the employer. The evidence strongly suggests that Ms. Corbin's pregnancy, lifting restriction, and FMLA approval factored into the employer's decision to end her employment.

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

**DECISION:**

The Agency representative's March 28, 2011, 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/kjw