

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SAMANTHA BAUM
Claimant

CARE INITIATIVES
Employer

APPEAL NO. 24A-UI-02248-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/28/24
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

On February 26, 2024, the employer filed a timely appeal from the February 15, 2024 (reference 01) decision that allowed benefits to the claimant, provided the claimant met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the deputy's conclusion the claimant was discharged on January 26, 2024 for no disqualifying reason. After due notice was issued, a hearing was held on March 21, 2024. Samantha Baum (claimant) did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Tom Kuiper of Equifax represented the employer and presented testimony through Jen Ketelsen. The administrative law judge took official notice of the IWD administrative record of benefits paid to the claimant (DBRO), which record reflects that no benefits have been paid to the claimant in connection with the claim.

ISSUES:

Whether the claimant was discharged for misconduct in connection with the employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Samantha Baum, R.N. (claimant) was employed by Care Initiatives as the full-time Director of Nursing at Belle Plaine Specialty Care from February 2023 until January 26, 2024, when the employer discharged her from the employment. On January 19, 2024, the treating nurse practitioner ordered an increase in a patient's feeding quantity. The claimant concluded that an increase in the patient's feeding quantity would be ill-advised and would trigger emesis (vomiting). The claimant did not comply with the nurse practitioner's order. The claimant did not contact the nurse practitioner to discuss her concerns about the order per protocol. The claimant left the feeding quantity unchanged.

On or about January 25, 2024, the employer noted the claimant's failure to comply with the nurse practitioner's order. When questioned by the employer, the claimant asserted that she

had discussed the feeding quantity with the nurse practitioner on January 19, 2024 subsequent to issuance of the order that day and that the nurse practitioner had agreed to leave the feeding quantity unchanged from what it was prior to the order. The claimant presented the employer with an updated order from the nurse practitioner that was entered on January 25, 2023, but that had been backdated to January 19, 2024. The updated order returned the feeding quantity to what it was prior to the original order of January 19, 2024.

In the course of investigating the matter, the employer solicited a written statement from the nurse practitioner. The nurse practitioner stated that she did not recall any conversation on January 19, 2023 about not implementing the order to increase the feeding amount. The nurse practitioner stated there had been no discussion with the claimant in the subsequent days regarding the feeding amount. The nurse practitioner stated that the claimant had presented two proposed orders for the nurse practitioner's signature on January 25, 2024, that the claimant had presented the orders at different times, which was not the usual practice, and that the claimant had asked the nurse practitioner to date one of the orders for any date after January 18, 2024. The nurse practitioner stated that when she asked the claimant whether a January 19, 2024 date would work, the claimant responded that it would. Through its investigation, the employer was able to discern that the claimant had manipulated the nurse practitioner into issuing a back-dated order and that the claimant had done so in an effort to hide her failure to comply with the nurse practitioner's earlier order. The employer deemed the claimant's conduct in the matter dishonest and a fundamental violation of the trust necessary in the claimant's position as Director of Nursing. The employer discharged the claimant on January 26, 2024.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)(a) and (d) provides as follows:

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 disqualification shall continue 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.

...

d. For the purposes of this subsection, "misconduct" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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. Misconduct by an individual includes but is not limited to all of the following:

...

(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

...

(10) Falsification of any work-related report, task, or job that could expose the employer or coworkers to legal liability or sanction for violation of health or safety laws.

...

See also Iowa Admin. Code r. 871-24.32(1)(a) (duplicating the text 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 Iowa Admin. Code r.871 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).

The weight of the evidence in the record establishes a January 26, 2024 discharge for misconduct in connection with the employment. The weight of the evidence establishes that the claimant violated nursing protocol and the scope of her authority by intentionally failing to comply with the treating medical provider’s order regarding care of a patient. To make matters worse, the claimant thereafter intentionally interfered with the employer’s investigation of the matter and engaged in dishonest behavior by manipulating the medical provider into issuing a backdated order with the goal of hiding the claimant’s failure to comply with the previous order. The claimant’s conduct amounted to falsification of a medical record. The claimant’s conduct fundamentally undermined the trust relationship between the claimant and the employer. The claimant’s role as Director of Nursing required that the claimant be truthful and trustworthy in all matters pertaining to the employment. The claimant’s conduct demonstrated a willful and wanton disregard for the employer’s interests, including the employer’s interest in providing appropriate care as ordered by the treating provider and the employer’s interest in maintaining accurate and truthful medical records free of manipulation. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer’s account shall not be charged for benefits.

Because no benefits have been paid in connection with the claim, there is no overpayment of benefits to address.

DECISION:

The February 15, 2024 (reference 01) decision is REVERSED. The claimant was discharged on January 26, 2024 for misconduct in connection with the employment. The claimant is disqualified for unemployment insurance benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in dark ink on a light-colored, slightly textured background.

James E. Timberland
Administrative Law Judge

March 26, 2024
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.