

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FRANCES L RAGUSA
Claimant

APPEAL NO: 17A-UI-10195-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GENESIS HEALTH SYSTEM
Employer

OC: -9/03/17
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Frances Ragusa filed an appeal from the September 25, 2017, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the claims deputy's conclusion that Ms. Ragusa was discharged on September 5, 2017 due to her failure to perform satisfactory work despite being capable of performing satisfactory work. After due notice was issued, a hearing was held on October 24, 2017. Ms. Ragusa participated. The employer did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. Exhibit A was 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: Frances Ragusa was employed by Genesis Health System from 1999 until September 5, 2017, when Brandi Erickson, CT Department Manager, discharged her from the employment. For the final 14 and a half years of the employment, Ms. Ragusa worked as a full-time CT Technologist. Ms. Ragusa was assigned to the 3:00 p.m. to 11:00 p.m. shift. Cindy Walters, Lead CT Technologist was Ms. Ragusa's immediate supervisor.

The September 5, 2017 discharge was based on a July 3, 2017 incident wherein Ms. Ragusa forgot to forward a set of CT scans for an outpatient CT scan to the CT department's computer archiving system. As Ms. Ragusa was escorting the patient and his family from the CT scan area, another CT Technician took possession of the CT scanner and began setting up the scanner for an involved scan Ms. Ragusa performed necessary documentation from another computer work station, but needed access to the particular CT scanner work station to forward the scans to the archiving system. The CT Technologists continued to be exceptionally busy through the end of Ms. Ragusa's shift. Ms. Ragusa forgot to forward the particular scans before she left for the day. Ms. Erickson identified the issue on the morning of July 5, retrieved the

scans, and forwarded the scans to the appropriate physician that morning. Ms. Erickson waited until the latter part of August 2017 to speak with Ms. Ragusa regarding the July 3, 2017. Ms. Ragusa had continued to work in the meantime. The employer then waited until September 5, 2017 to discharge Ms. Ragusa from the employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

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 evidence in the record establishes that the September 5, 2017 discharge was not based on a current act. The incident that triggered the discharge occurred two months earlier and came to the employer's attention on July 5, 2017. The employer unreasonably delayed discussing the matter with Ms. Ragusa by deferring that discussion to the latter part of August 2017. Because the discharge was not based on a current act, the administrative law judge concludes that Ms. Ragusa was discharged for no disqualifying reason. Accordingly, Ms. Ragusa is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The September 25, 2017, reference 01, decision is reversed. The claimant was discharged on September 5, 2017 for no disqualifying reason. The discharge was not based on a current act. 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/rvs