

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MEGAN A PARSONS**

Claimant

**APPEAL NO. 10A-UI-06449-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OPTIMAE LIFESERVICES INC**

Employer

**OC: 03/21/10**

**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 April 19, 2010, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on July 26, 2010. Claimant participated. Connie Dusek, Administrative Assistant, represented the employer and presented additional testimony through Barb Whitten, Program Director. Exhibits One through Six 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: The employer is a human services provider and provides services to mentally retarded individuals. Megan Parsons was employed by Optimae Lifeservices, Inc., on a full-time basis from September 2007 until May 24, 2010, when Barb Whitten, Program Director, discharged her from the employment. Ms. Whitten was Ms. Parson's immediate supervisor. Ms. Parsons started the employment as a community support staff person, but completed training to become an intensive psychiatric rehabilitation (IPR) practitioner and commenced performing IPR duties in February of 2008.

The final matters that triggered Ms. Parsons' discharge from the employment concerned completion of assigned duties and other preparation before Ms. Parsons started an approved leave under the Family and Medical Leave Act. Ms. Parsons started the leave effective March 4 and returned to work on March 24, 2010, at which time she was discharged. The basis for the leave was Ms. Parsons' need to travel with her baby to the University of Iowa Hospitals and Clinics so that the baby could undergo surgery on his skull to create a suture to allow the baby's head to grow. The leave period was also to include time Ms. Parsons would need to care for her baby after he was discharged from the UIHC and as he recovered from the surgery. Ms. Parsons had just learned at the end of February that her baby would need to undergo the surgery.

Ms. Parsons had many work matters to attend to before she left for her approved leave, but ran out of time in which to complete them. Ms. Parsons had been trying to reach a funding source, Majellan, to provide an axis one diagnosis necessary to secure funding for a client. Ms. Parsons had made multiple unsuccessful attempts to reach the Majellan representative. Ms. Parsons had mentioned this problem to the staff member who was to fill in for her during her absence. Ms. Parsons had intended to have materials regarding two clients in order so that her replacement could easily step in as their provider. Mr. Parsons provided the necessary materials, but did not have them organized. The substitute worker would have to review progress notes and organize the materials to get up to speed with the two clients. Ms. Parsons left a note for her substitute regarding steps she had been unable to complete before starting her leave. Ms. Parsons started her leave without completing her timesheets and billable hour reports. The employer had to contact Ms. Parsons on March 8 to request the timesheets and billable hour reports.

The employer had concerns about Ms. Parsons' work performance well before Ms. Parsons started her approved leave of absence. The concerns centered on failure to complete the required number of billable hours per week, failure to turn in paperwork on time, and failure to properly communicate issues to her supervisor. The employer had placed Ms. Parsons on a Staff Development Plan at the end of January 2010 to address these matters.

#### **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 weight of the evidence in the record establishes that there were serious extenuating circumstances that prevented Ms. Parsons from satisfactorily ordering her work affairs before she commenced the approved leave of absence. Ms. Parsons had just learned at the end of February that her infant son needed to undergo a significant medical procedure and had very little time to organize her work affairs. Ms. Parsons was not at liberty to defer attending to her son’s serious medical circumstances so that she could leave work matters in a manner that would be satisfactory to the employer. Ms. Parsons did what she could before commencing the leave of absence. Ms. Parsons communicated to her substitute her failure to organize the two clients’ documentation and her inability to reach Majellan regarding the funding issue. Ms. Parsons did fail to complete documentation regarding her billable hours and timesheets. At the time the employer reminded Ms. Parsons of this shortcoming, Ms. Parsons’ son had just been discharged from the hospital the same day. While the employer’s concerns about Ms. Parsons’ performance were understandable, the context in which the final matters arose prevents the administrative law judge from concluding they involved intentional disregard of the employer’s interest, negligence, or carelessness. In the absence of a current act of misconduct, the administrative law judge concludes that Ms. Parsons was discharged for no disqualifying reason and is eligible for benefits, provided she is otherwise eligible. The employer’s account may be charged for benefits paid to Ms. Parsons.

**DECISION:**

The Agency representative's April 19, 2010, reference 01, decision is affirmed. 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

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