

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JENNIFER N WHITAKER
Claimant

APPEAL NO. 22A-UI-08391-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**HOPE HAVEN AREA DEVELOPMENT
CENTER CORPORATION**
Employer

OC: 03/06/22
Claimant: Respondent (5)

Iowa Code Section 96.5(2)(a) – Discharge
Iowa Administrative Code rule 871-24.32(9) – Suspension Analyzed as Discharge

STATEMENT OF THE CASE:

On April 1, 2022, the employer filed a timely appeal from the March 25, 2022 (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 that the claimant was discharged on March 5, 2022 for no disqualifying reason. After due notice was issued, a hearing was held on May 16, 2022. Jennifer Whitaker (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. Nancy Whitacker-Kropp represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant, which record reflects the claimant has not made weekly claims and no benefits have been disbursed. Exhibit 2 (the March 6, 2022 Personnel Active Form), Exhibits 4 and 5 (payment records), and Exhibit 6 were received into evidence. All other proposed exhibits were excluded from evidence.

ISSUES:

Whether the claimant was laid off, was discharged for misconduct in connection with the employment, or voluntarily quit without good cause attributable to the employer.
Whether the claimant suspended for misconduct in connection with the employment.

FINDINGS OF FACT:

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

The claimant is employed by Hope Haven Area Development Center as a full-time Direct Support Provider (DSP). The employer provides in-home care and community care to adults with disabilities, which disabilities may include brain injury, intellectual disabilities and/or autism. The claimant began her employment in May 2021. Effective March 5, 2022, the employer suspended the claimant without pay while the employer investigated a client's allegation that the claimant had abused the client. The employer investigated the allegation by interviewing residents in the home where the claimant worked, by interviewing the claimant's coworkers who

worked in the same home, and by interviewing the claimant. The employer representative did not participate in the investigation and does not know what information the claimant, the complaining client, or others provided pursuant to the investigation. The employer recalled the claimant to the employment effective March 21, 2021. The employer did not in any manner discipline the claimant. The employer paid the claimant wages for the shifts the claimant was compelled to miss during the suspension period.

The claimant established an original claim for benefits that was effective March 6, 2022. The claimant did not make weekly claims and has not received any benefits in connection with the claim. In the absence of weekly claims, the employer's account has not been charged for benefits.

REASONING AND CONCLUSIONS OF LAW:

Iowa Administrative Code rule 871-24.32(9) provides as follows:

Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

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 discharge or disciplinary suspension 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 evidence in the record establishes the employer suspended the claimant effective March 5, 2022 for no disqualifying reason and recalled the claimant from the suspension effective March 21, 2022. Based on the disciplinary suspension, the claimant is eligible for benefits, provided the claimant meets all other eligibility requirements. The employer's account may be charged. However, the administrative law judge notes the absence of weekly claims. In the highly unlikely event the claimant requests and IWD allows retroactive claims for the period of the suspension, retroactive wages the employer paid the claimant for that period would be deductible from unemployment insurance benefits. See Iowa Administrative Code rule 871-24.18 (A claimant whose weekly wages exceed the weekly benefit amount by more than \$15.00 is not eligible for weekly unemployment insurance benefits).

DECISION:

The March 25, 2022 (reference 01) decision is MODIFIED only to acknowledge that the March 5, 2022 incident was a disciplinary suspension for the period of March 5-20, 2022, rather than a permanent separation from the employment. The claimant was suspended for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

A rectangular box containing a handwritten signature in cursive script that reads "James E. Timberland".

James E. Timberland
Administrative Law Judge

June 16, 2022
Decision Dated and Mailed

jet/mh