

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JENNIFER M LIGHTFOOT**  
Claimant

**APPEAL NO. 08A-UI-08672-JT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DAC INC**  
Employer

**OC: 08/17/08 R: 04  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Jennifer Lightfoot filed a timely appeal from the September 25, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on December 3, 2008. Ms. Lightfoot participated. Tina Miller, Director of Human Resources, represented the employer and presented additional testimony through Jody Graves, former Activity/Transportation Coordinator, and Dave Smith, Director of Operations in Dubuque. Exhibits One through Eight and A 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: Jennifer Lightfoot was employed by DAC Inc. on a part-time basis from December 8, 2006 until August 19, 2008, when Tina Miller, Director of Human Resources, and Dave Smith, Director of Operations in Dubuque, discharged her. Ms. Lightfoot had started the employment as a dietary aide. On November 12, 2007, Ms. Lightfoot became a transportation aide. Ms. Lightfoot's immediate supervisor was Jody Graves, former Activity/Transportation Coordinator. Ms. Graves is currently the Activity Coordinator. Ms. Lightfoot provided transportation services to mentally ill adults who resided at the Julien Care Facility. Ms. Lightfoot had worked with the same population throughout her employment.

The final incident that prompted the discharge occurred on August 13, 2008. Ms. Lightfoot was to transport residents D.K., T.C. in the employer's van. D.K. is an obese female, whose primary mental health diagnosis is depression. On those occasions when Ms. Lightfoot transported D.K., D.K. would ask for assistance in getting her legs inside the van. Ms. Lightfoot believed D.K. was capable of getting herself into the van and did not appreciate D.K.'s requests for assistance. D.K. receives multiple services from DAC Inc. One service D.K. receives seeks to address her obesity. This service is part of D.K.'s care plan. Ms. Lightfoot was aware that treatment and support for dealing with obesity was part of D.K.'s care plan. On August 13, D.K.

asked Ms. Lightfoot for assistance in getting situated in the van. In the process of assisting D.K., Ms. Lightfoot told D.K. that she would have less difficulty getting into the van if she did not have snacks in front of her all the time. Ms. Lightfoot also told D.K. that D.K. had no willpower. Ms. Lightfoot continued to make negative comments about D.K. even after D.K. asked her to stop. Another passenger, T.C., felt compelled to come to D.K.'s defense and also asked Ms. Lightfoot to stop. Ms. Lightfoot's conduct was in violation of the employer's written harassment policy and other policies. Ms. Lightfoot was aware of the policy and had received a copy of the handbook in which the policy appeared. In addition, Ms. Lightfoot had received training that concerned how to appropriately interact with the dependent adults the employer served. D.K. reported the incident to Ms. Graves. Ms. Graves spoke directly with D.K., T.C. and Ms. Lightfoot. Ms. Lightfoot conceded that she made negative remarks. Ms. Lightfoot became upset when Ms. Graves took notes during the interview. Ms. Graves reported the details of her investigation of the matter to Dave Smith, Director of Operations in Dubuque, who made the decision to discharge Ms. Lightfoot.

In making the decision to discharge Ms. Lightfoot, the employer also considered an incident from March 11, 2008. On that date, Ms. Lightfoot was collecting a resident/client from a substance abuse treatment program. Ms. Lightfoot made comments to the resident that were disrespectful, argumentative, accusatory and rude. The substance abuse treatment program director witnessed the incident and contacted the employer. Ms. Lightfoot's conduct had caused embarrassment to the resident/client. Ms. Lightfoot's conduct was in violation of the employer's harassment policy and other policies. The employer issued a written reprimand to Ms. Lightfoot in connection with the incident. The reprimand issued a suspension, but also held the suspension in abeyance.

In connection with both incidents, Ms. Lightfoot apologized to the client, but only after the employer had commenced its investigation and was in the process of determining an appropriate reprimand.

#### **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 indicates that Ms. Lightfoot understood that her job duties included providing support and compassion to a dependent adult population that suffered from mental illness. The weight of the evidence indicates that in connection with both incidents referenced above Ms. Lightfoot knowingly undermined the goal of providing appropriate support to the individuals the employer served. In both instances, Ms. Lightfoot directed harassing statements to mentally ill persons. Ms. Lightfoot readily minimizes and excuses her conduct. Ms. Lightfoot minimizes and dismisses the training she received that told her how to appropriately interact with the employer's clients. The weight of the evidence does in fact establish willful and wanton disregard of the employer's interests and the client's interest in connection with the final incident that prompted the discharge. The evidence indicates that Ms. Lightfoot had been duly warned about her demeanor and interaction with clients in connection with the March incident.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Lightfoot was discharged for misconduct. Accordingly, Ms. Lightfoot is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Lightfoot.

**DECISION:**

The Agency representative's September 25, 2008, reference 01 decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements. The employer's account will not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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