

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

MATTHEW A SKINNER
Claimant

APPEAL NO. 19A-UI-05234-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REM IOWA COMMUNITY SERVICES INC
Employer

OC: 05/26/19
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 20, 2019, reference 02, decision that allowed benefits to the claimant provided he 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 May 20, 2019 for no disqualifying reason. After due notice was issued, a hearing was held on July 24, 2019. Claimant Matthew Skinner did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. RoxAnne Rose of ADP represented the employer and presented testimony through July Bloyer, Nicole Guzman, and Laura Morris. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant (DBRO), which record reflects that no benefits have been disbursed to the claimant in connection with the May 26, 2019 original claim. Exhibits 1, 2, 4, 5, 6, 8, 12, 13 and 14 were received into evidence.

ISSUES:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: REM Iowa Community Services, Inc. is a social services agency that provides home and community based support services to adults with disabilities. Matthew Skinner was employed by REM as a Direct Support Professional from 2017 until May 28, 2019, when the employer discharged him for verbally abusing disabled clients. The conduct that triggered the discharge came to the employer's attention on May 19, 2019. On that day, a client used his personal cellphone to call Program Supervisor Julie Bloyer at the very time that Mr. Skinner was verbally abusing an intellectually disabled dependent adult client. Ms. Bloyer could hear Mr. Skinner screaming at the client. Ms. Bloyer heard Mr. Skinner yell at the client "You're a fucking stupid idiot!" and heard Mr. Skinner ask the client whether the client was "methed up." Ms. Bloyer made arrangements for another employee to relieve Mr. Skinner and sent Mr. Skinner home early

from his shift. On the next day, Program Director Nicole Guzman interviewed the three client roommates who had been present for Mr. Skinner's abusive outburst. When Ms. Guzman interviewed Mr. Skinner, Mr. Skinner stated that he had been upset with the client for mentioning to Mr. Skinner's coworker a comment Mr. Skinner had made about quitting the employment. Mr. Skinner conceded that he had called the client an idiot. The employer's investigation revealed that Mr. Skinner had also called the client a "retard." The employer suspended Mr. Skinner pending further investigation and notified Mr. Skinner on May 28, 2019 of the employer's decision to discharge Mr. Skinner from the employment. Mr. Skinner's verbal abuse of the client violated multiple employer policies, including the Employee Code of Conduct and the Individual Rights Statement. Mr. Skinner had received appropriate training in all relevant employer policies.

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).

The evidence in the record establishes a discharge based on misconduct in connection with the employment. Mr. Skinner acted with willful and wanton disregard of the employer's interests, and with willful and wanton disregard of the interests of the dependent adults in his care, when he subjected an intellectually disabled client to aggressive, offensive, profane and demeaning verbal abuse. Mr. Skinner is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. Mr. Skinner must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

Because no benefits have been disbursed in connection with the claim, there is no overpayment of benefits to be addressed.

DECISION:

The June 20, 2019, reference 02, decision is reversed. The claimant was discharged for misconduct in connection with the employment. The discharge was effective May 28, 2019. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs