

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRI J MOTT
Claimant

APPEAL NO. 16A-UI-13781-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTRAL IOWA SHELTER & SERVICES
Employer

OC: 11/20/16
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 December 20, 2016, reference 02, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on the claims deputy's conclusion that the claimant had been discharged on November 17, 2016 for no disqualifying reason. After due notice was issued, a hearing was held on February 7, 2017. Claimant Terri Mott did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. Melissa O'Neil represented the employer and presented additional testimony through Janiece Alford and Katherine Bennett. The administrative law judge took official notice of the agency's record of benefits disbursed to the claimant and received Exhibits 1 and 2 into evidence. The administrative law judge took official notice of the fact-finding materials.

ISSUE:

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: Central Iowa Shelter & Services operates a homeless shelter in Des Moines. The facility has 207 beds, but can accommodate an additional 150 overnight residents in chairs located in two day rooms. About 60 percent of the homeless individuals who utilize the shelter suffer from mental illness. About 80 percent of the homeless individuals who utilize the shelter have a substance abuse issue. Many of the homeless individuals who utilize the shelter have behavioral issues. The employer emphasizes and periodically reminds staff of the need to approach these challenged and challenging clients with dignity and respect so as to create a safe place for the clients.

Terri Mott was employed by Central Iowa Shelter & Services as a full-time shelter assistant from 2014 until November 17, 2016, when Janiece Alford, discharged her from the employment. Ms. Alford was Operations Manager at the time of Ms. Mott's employment. Ms. Mott's duties

included manning the service desk, entering resident information into the computer, patting down residents when they entered the shelter, enforcing shelter rules, maintaining a safe environment, and otherwise making certain that residents had what they needed. On an average day, Ms. Mott might interact with about 120 clients. The shelter assistant work required a high school diploma, but no further education. Ms. Mott possessed the requisite high school diploma.

On November 17, 2016, Alford presented Ms. Mott with a termination memo that stated the following:

The purpose of this letter is to notify you of the termination of your employment with Central Iowa Shelter & Services.

After review of your performance as a full-time shelter assistant the past six months, speaking with administration and the CISS clients and coworkers I believe it is time for use to bring the relationship to an end. Regrettably this means your employment with CISS will be terminated based on one of two options below.

Based on your length of stay as an employee at CISS and passion for serving the residents we would like to offer you the following two options:

Option A: You may choose to end your employment with CISS, gather you're [sic] belongs [sic], return all property belonging to CISS and vacate the property immediately. The 20 hours of PTO that you have remaining will be paid out immediately.

Option B: You may choose to stay in your current position until Sunday, November 27, 2016. Effectively ending your employment with CISS.

We thank you for the valuable contribution you have made during your employment with CISS. Please let us know which of the two options you would like to explore at our agreed upon meeting time on Monday 21st.

The final incident that triggered the discharge occurred on November 16, 2016, when Ms. Mott raised her voice while interacting with a disgruntled client. Ms. Mott took the client's name and assigned the client an intake time so that the client could be processed into the shelter. The client was unhappy with the notion that the client would have to leave and return at the assigned intake time. Ms. Mott followed the established protocol in assigning the intake time and in directing the client to leave and return at the appointed time. When the client voiced her displeasure with the arrangement, Ms. Mott raised her voice while addressing the client. Ms. Mott told the client that she was only trying to do her job and told the client that she was going to have to come back. Ms. Alford was within hearing during the incident and describes the volume of Ms. Mott's voice as a six on a scale of one to 10. Other clients were in the vicinity at the time. Ms. Alford came out of her office, tapped Ms. Mott on the shoulder, and told her to calm down. Ms. Mott returned to a calm demeanor. Ms. Mott explained to Ms. Alford that the client frequented the shelter, but did not wish to follow the shelter rules. Ms. Alford reminded Ms. Mott of the need to treat clients with dignity and respect.

In February 2016, Ms. Alford had met with Ms. Mott to discuss how Ms. Mott "gives off the attitude as abrupt, uptight, uncompassionate and non-approachable" when she became overwhelmed with the chaotic environment. Ms. Alford told Ms. Mott that she needed to be mindful of how clients perceived her tone and her actions. Ms. Alford told Ms. Mott that such an

approach did not demonstrate dignity and respect. Ms. Alford acknowledged that everyone has bad days and told Ms. Mott that it was okay to step away when she felt she could not maintain a professional demeanor. Ms. Mott agreed to work on concerns.

In April 2016, Ms. Alford had another meeting with Ms. Mott in response to Ms. Mott becoming stern when interacting with a client. Ms. Mott yelled at a client to leave the day room of the shelter because the client was not wearing shoes. Ms. Mott was reinforcing the shelter rules that required the client to wear shoes. The client explained that she had just wanted to get a drink of water. Tommy Ross, "Mission Builder," intervened and reinforced that the client needed to leave the shelter until 4:00 p.m. and that the client was required to wear shoes at all times while moving about the shelter. Ms. Alford was within hearing during the incident and spoke to Ms. Mott about the matter. Ms. Mott explained that she did not intend to send the client out of the shelter without shoes, but she had previously told the client three times to put on her shoes. Ms. Alford counseled Ms. Mott on the need to model appropriate behavior and to mind her attitude and behavior when interacting with clients.

In May 2016, Ms. Alford met with Ms. Mott for a periodic review meeting. At that time, Ms. Alford told Ms. Mott that Ms. Alford had received feedback from clients indicating that Ms. Mott had changed her approach. Ms. Alford told Ms. Mott that she had noticed how hard Ms. Mott had been working toward showing dignity and respect.

In July 2016, Ms. Alford met with Ms. Mott after shelter assistant Christy Cox complained that Ms. Mott was not rotating through the shelter on a consistent basis. Ms. Cox complained that Ms. Mott had yelled at her over the walkie-talkie system. Ms. Mott had told Ms. Cox to strip a bed "and do it now." Ms. Mott and Ms. Cox were at times mutually disrespectful in their interactions with one another. Ms. Cox found Ms. Mott's utterances to be demeaning. Ms. Mott was upset with Ms. Cox because she did not believe Ms. Cox did her job and further believed that Ms. Cox's failure to do her job created an unsafe environment. Ms. Alford reminded Ms. Mott that she had signed a Code of Ethics and that the conduct in question fell short. Ms. Mott agreed to be more mindful of how she interacted with other staff.

On September 9, Ms. Alford met with Ms. Mott and placed her on a 60-day probation in response to allegations that Ms. Mott had again demonstrated a lack of professionalism. At that time, Ms. Alford warned Ms. Mott that she could face further discipline up to suspension without pay or termination of the employment, if she did not immediately address performance deficits.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

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 employer had legitimate concerns about how Ms. Mott came across to others. However, the weight of the evidence does not establish a discharge that was based on a willful and wanton disregard of the employer's interests. Ms. Alford appears to acknowledge in the termination letter that the concern was more a matter of fitness for the position, of lacking the requisite skill set, rather than disregard of the employer's interests or of clients' interests. The shelter staff, including Ms. Mott, had to deal with a very challenging populace, most of whom were mentally ill, drug abusing, and/or behaviorally disordered. The weight of the evidence indicates that Ms. Mott from time to time could be too stern in reinforcing the shelter rules. Ms. Mott would have to walk a fine line to perform her assigned duties in a chaos-prone environment and at the same time maintain an

attitude of courtesy, dignity and respect. While Ms. Mott's failings in that context reflect lapses in judgment and/or self-regulation, her conduct did not evidence an intentional and substantial disregard of the employer's interests. Accordingly, the administrative law judge concludes that Ms. Mott was discharged for no disqualifying reason. Ms. Mott is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

DECISION:

The December 20, 2016, reference 02, decision is affirmed. The claimant was discharged on November 17, 2016 for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs