

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DENISE COLEMAN
Claimant

PRK WILLIAMS INC
Employer

APPEAL NO. 20A-UI-07449-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
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 June 24, 2020, reference 01, decision that allowed benefits to the claimant, provided she 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 April 7, 2020 for no disqualifying reason. After due notice was issued, a hearing was started on August 10, 2020 and completed on August 14, 2020. Claimant Denise Coleman participated. Cindi Leitheiser represented the employer and presented additional testimony through Tyler Jentz. Exhibits 1 through 13, A through F, and H through K were received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant (DBRO and KPYX).

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: Denise Coleman was employed by PRK Williams, Inc., doing business as To The Rescue, as a full-time Direct Support Professional from January 8, 2020 until April 7, 2020, when the employer discharged her from the employment. Ms. Coleman's work duties involved providing individualized support to adults with mental health and/or physical disabilities in a home environment shared by up to five clients.

The final incident that triggered the discharge is alleged to have occurred on March 30, 2020. The employer alleges that on that day, at some point between 5:00 p.m. and 6:00 p.m., Ms. Colman slept at a time when she was supposed to be supervising clients. The employer alleges that a coworker found Ms. Coleman sitting in a chair in the living room of her assigned house with her head down and her eyes shut, and that the coworker observed Ms. Coleman for a little over 30 seconds. Ms. Coleman denies that she at any point slept at work and denies that any such encounter with the coworker occurred. The coworker reported her concern to the employer on April 1. The employer interviewed the coworker, but elected not to interview

Ms. Coleman regarding the alleged incident. The employer's work rules allowed overnight staff to sleep during the hours of 11:00 p.m. to 6:00 a.m., but prohibited employees from sleeping at other times. On April 7, employer notified Ms. Coleman that she was discharged from the employment. There had been no other similar concerns in the employment.

In making the decision to discharge Ms. Coleman from the employment, the employer considered prior, unrelated matters and that Ms. Coleman was still within the first 90 days of the employment. Toward the end of February, a client attacked Ms. Coleman. Ms. Coleman attempted to free herself from the client by pushing him off of her and, in the process, caused scratches on the client's face. Immediately thereafter, the employer transferred Ms. Coleman to another client house. The employer alleges that Ms. Coleman refused to work with the client in question. Ms. Coleman denies any such refusal. The employer also considered three medication documentation errors that occurred on March 2, March 9, and March 11. The employer provided brief medication management training at start of the employment. The first error occurred when Ms. Coleman was training in the newly assigned house. The employer also considered a March 17 incident wherein Ms. Coleman made a video recording of a client. The employer understood the basis for the video recording to be Ms. Coleman's concern that a home healthcare worker was mistreating a client. Ms. Coleman denies that was the basis for the recording and asserts instead that she wished to document a client's seizure-type activity so that she could share that with the paramedics that were summoned to assist the client. The employer's work rules prohibited taking photographs of clients or of a client's home. The employer reviewed the work rules with Ms. Coleman at start of the employment and again reviewed the work rules with Ms. Coleman after the video recording incident.

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).

Sleeping on the job may constitute misconduct that would disqualify a claim for unemployment insurance benefits. See *Hurtado v. IDJS*, 393 N.W.2d 309 (Iowa 1986). In *Hurtado*, the employer had discovered the employee sleeping on the job twice, with the instances occurring approximately one year apart.

The evidence in the record establishes a discharge on April 7, 2020 that was for no disqualifying reason. The employer presented insufficient evidence, and insufficiently direct and satisfactory evidence, to meet its burden of proving, by a preponderance of the evidence, that Ms. Coleman knowingly and intentionally slept on the job on March 30, 2020. The employer presented insufficient evidence to rebut Ms. Coleman's testimony that no such incident occurred. The employer had the ability to present testimony through the coworker who allegedly observed Ms. Coleman sleeping, but the employer elected not to present such testimony. Even if the allegation as stated by the employer were true, the evidence would still not prove that Ms. Coleman intentionally slept on the job. The evidence fails to establish a current act of misconduct. Because the evidence fails to establish a current act of misconduct, there is no basis for disqualifying Ms. Coleman for unemployment insurance benefits. Because the evidence fails to establish a current act of misconduct, the Administrative Law Judge need not consider the earlier matters that factored in the discharge. Ms. Coleman is eligible for benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits. The administrative law judge notes that the employer is not a base period employer for purposes of the claim year that began for Ms. Coleman on April 5, 2020 and that will end on or about April 4, 2021. Because the employer is not a base period employer, the employer is not subject to charge for benefits paid to Ms. Coleman in the current claim year.

See Iowa Code section 96.7(2) (regarding base period employer liability). In the event that Ms. Coleman establishes a new claim year and is deemed eligible for unemployment insurance benefits in connection with that new claim year, the employer's account may be charged.

DECISION:

The June 24, 2020, reference 01, decision is affirmed. The claimant was discharged on April 7, 2020 for no disqualifying reason. The claimant is eligible for benefits, provided he 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

August 20, 2020
Decision Dated and Mailed

jet/scn