

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAITLIN C HARBRON

Claimant

APPEAL NO. 15A-UI-03711-N

**ADMINISTRATIVE LAW JUDGE
DECISION**

TRINITY CONTINUING CARE SERVICES

Employer

OC: 03/01/15

Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated March 17, 2015 (reference 01) which denied unemployment insurance benefits, finding that the claimant was discharged for a known company rule. After due notice was provided, a hearing was held in Davenport, Iowa on April 21, 2015. Claimant participated. Participating on behalf of the claimant was Mr. John Graupmann, Legal Assistant with Iowa Legal Aid. The employer participated by Mr. Neil McVicar, Hearing Representative/MHA Unemployment Compensation Program. Appearing as witnesses for the employer were Ms. Carolyn Mulholland, Ms. Theresa Nielsen, and Ms. Alexandra Davis. Employer's Exhibits A, B, C, and D were admitted into evidence.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

After considering all of the evidence in the record, the administrative law judge finds: Kaitlin Harbron was employed by Trinity Continuing Care Services from November 2, 2014 until March 2, 2015 when she was discharged from employment. Ms. Harbron was employed as a full-time certified nursing assistant and was paid by the hour. Her immediate supervisors were the floor nurses on duty.

Ms. Harbron was discharged because of an incident that had taken place on February 25, 2015. On that date, the claimant had been assigned to provide personal care to an elderly female resident and the claimant had been instructed to assist the resident in showering. When another CNA, Alexandra Davis, was sent to assist Ms. Harbron, Ms. Davis witnessed the claimant making inappropriate statements in the presence of the resident; which reflected the claimant's dissatisfaction with the assignment to assist the resident in showering.

Ms. Harbron stated to Ms. Davis several times that because the resident had diarrhea “I don’t want to give her a shower because I don’t want to clean the shit off of the floor.” Ms. Davis was aware of that the claimant had been assigned to give that resident a shower and believed that the claimant’s repeated statements in the presence of the resident were inappropriate, not only because of the words used but also because the claimant’s statements reflected the claimant’s disdain for providing necessary care to the resident. In an effort to assist Ms. Harbron, Ms. Davis personally cleaned the resident of her diarrhea; whereupon Ms. Harbron then gave the resident the shower. Because Ms. Davis considered the claimant’s prior refusals and statements inappropriate, she reported the matter to management.

The employer considered the claimant’s conduct to be a serious violation of Trinity Continuing Care Services policies and because the claimant had been previously warned for not following policies a decision was made to terminate Ms. Harbron from her employment.

It is the claimant’s position that she did not use the word “shit” but instead used the word “poop.” It is the claimant’s further position that she did not actually refuse to provide the shower to the resident but was only urging the resident to hold her bowels until the shower could be set up.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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).

In discharge cases, the employer has the burden of proof to establish disqualifying conduct on the part of a claimant. 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, may not necessarily be 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. of Appeals 1992).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based upon such past acts. The termination of employment must be based on a current act. See 871 IAC 24.32(8).

In the case at hand, the claimant was discharged from her employment as a certified nursing assistant based upon the report of another employee that the claimant had used inappropriate language repeatedly to express her disdain and her desire not to provide necessary personal care services to a resident who had been assigned to her care. The employer found the statements of Ms. Davis to be credible and because the claimant had been previously warned for failing to follow policies in providing care to a resident, a decision was made to terminate the claimant from her employment. The employer reasonably concluded that the claimant's statements were inappropriate and expressed the claimant's desire not to provide the services to the resident and that the statements were made in the presence of the resident herself.

While the administrative law judge is cognizant that the claimant states she used a different word and that her statements were not in the form of a refusal to provide the services, the administrative law judge finds that the testimony of the employer's witness Ms. Davis to be credible. Ms. Davis testified with specificity as to the claimant's statements and the circumstances, and the evidence in the record does not establish that Ms. Davis had any ulterior motive or self-interest reasons to provide false statements to the employer or at the time of hearing. For these reasons, the administrative law judge finds that the evidence establishes favor to the employer.

Upon the application of the facts and the appropriate law, the administrative law judge concludes that the claimant was discharged under disqualifying conditions. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, and she is otherwise eligible.

DECISION:

The representative's decision dated March 17, 2015 (reference 01) is affirmed. The claimant was discharged for misconduct. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, and she is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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