

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**CHRIS BILLMAN**  
Claimant

**APPEAL NO. 19A-UI-08855-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**REM IOWA COMMUNITY SERVICES INC**  
Employer

**OC: 10/06/19**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Chris Billman filed a timely appeal from the October 31, 2019, reference 02, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant was discharged on December 27, 2018 for misconduct in connection with the employment. After due notice was issued, a hearing was held on December 5, 2019. Mr. Billman participated. The employer did not participate in the appeal hearing. The employer registered a telephone number for the appeal hearing and registered Katie Blunt as the employer's representative for the appeal hearing. However, Ms. Blunt was not available at the registered number at the time of the appeal hearing. The hearing in this matter was consolidated with the hearing in Appeal Number 19A-UI-08856-JTT. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant.

**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: Chris Billman was employed by REM Iowa Community Services, Inc. from 2016 until December 27, 2018, when the employer indefinitely suspended him from the employment in response to a client's allegation that Mr. Billman had abused a mentally ill client. Mr. Billman did not abuse the client. The employer has never recalled Mr. Billman to the employment since indefinitely suspending him from the employment in December 2018.

**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 for no disqualifying reason. The employer did not participate in the appeal hearing and did not present any evidence to meet its burden of proving that the involuntary separation was for misconduct in connection with the employment.

The evidence in the record fails to establish that Mr. Billman abused the client or engaged in any other disqualifying misconduct in connection with the employment. The indefinite suspension was in effect a discharge from the employment. Mr. Billman is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits.

**DECISION:**

The October 31, 2019, reference 02, decision is reversed. The claimant was discharged on December 27, 2018 for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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