

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BRENDA K KERNER
Claimant

APPEAL NO. 21A-UI-06999-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRAIRIE VIEW MANAGEMENT INC
Employer

OC: 01/10/21
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 4, 2021, reference 01, decision that disqualified the claimant 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 January 14, 2021 for failure to perform satisfactory work despite being capable of performing satisfactory work. After due notice was issued, a hearing was held on May 4, 2021. Claimant participated. Nick Reiersen represented the employer. Exhibits 1 through 7 were received into evidence.

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: Prairie View Management, Inc. provides home and community based support (HCBS) services to adult clients with intellectual and/or mental health disabilities. The claimant was employed by Prairie View Management, Inc. as a full-time Site Coordinator from 2018 until January 14, 2021, when the employer discharged her from the employment. The claimant last performed work for the employer on January 4, 2021 and was discharged on January 14, 2021 upon her return from an extended absence due to COVID-19 illness. The claimant supervised all aspects of operations at two client houses. The claimant had a long list of responsibilities set forth in the job description the employer provided to her at the start of the employment. See Exhibit 5. The duties included supervising up to 15 Direct Support Professionals.

In October 2020, the employer placed the claimant on a performance improvement plan (PIP) after the employer identified several deficiencies in the claimant's performance of her Site Coordinator duties. The PIP followed earlier discussions with the claimant regarding deficiencies in her performance. The concerns included late submission of budgets, billing, monthly progress and documentation review. The claimant had recently submitted seven months' worth of budgets that were supposed to be submitted monthly. The concerns included late submission of Individual Service Plans and goals. The concerns included late submission

of weekly walk-through reports. The concerns included not ensuring that client-specific emergency information binders were present in the home with the client and up to date. The binders were to include that client's diagnoses, medications, individualized needs, and individualized service plans, as well as a summary form to be presented to and completed by the client's physician. The concerns several deficiencies related to clients' finances. One client for whom the claimant was payee had an overdrawn bank account. As part of the PIP, the employer set a November 9, 2020 deadline for submission of delinquent paperwork, set a number of other performance expectations, and indicated the claimant would thereafter participate in weekly meeting with her supervisor.

After the claimant went off work due to illness during the first week of January 2021, the employer investigated and reviewed her work performance. Before the claimant went off work in January, she assisted with relocating clients from one house to another and attended to this in lieu of working on the issues identified in the PIP. This included cleaning, a task that could have been readily delegated to a subordinate. The employer determined that several weekly walk-through reports for October through December had not been submitted. The employer determined there were several deficiencies related to the Medication Administration Record (MAR). The employer determined that several client-specific emergency binders were not updated and three were completely absent from home in which the client resided. The employer determined that budgeting and monthly progress notes for October and November had not been submitted. The employer completed its investigation on January 8, 2021.

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 Iowa Administrative Code rule 871-24.32(4).

The evidence in the record establishes a discharge for misconduct in connection with the employment. The evidence establishes a myriad of work performance deficiencies, negligence, over the course of several months that occurred in the context of ongoing discourse between the employer and the claimant regarding the need to resolve the deficiencies. The weight of the evidence also establishes failure on the part of the claimant to take steps to resolve the deficiencies despite the significant negative impact on client safety and wellbeing, client finances, and the employer's operations. The pattern of conduct indicated, taken as a whole, evidences an intentional and substantial disregard for the employer's interests. The claimant's COVID-19 illness had no impact on the claimant's failure to meet the performance expectations, as the deficiencies that triggered the discharge arose and remained unresolved during the period prior to the claimant's absence at the end of the employment. The claimant had the ability to comply with the expectations set forth in the performance improvement plan, but neglected to do so for such reasons that included performing cleaning duties that could have been readily delegated to a subordinate and that reasonable supervisor would have delegated. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant's weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The March 4, 2021, reference 01, decision is affirmed. The claimant was discharged on January 14, 2021 for misconduct in connection with the employment. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant's weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

A rectangular box containing a handwritten signature in cursive script that reads "James E. Timberland".

James E. Timberland
Administrative Law Judge

July 30, 2021
Decision Dated and Mailed

jet/lj