

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

DANIELLE D BUTLER
Claimant

APPEAL NO. 19A-UI-02082-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CATHOLIC HEALTH INITIATIVES – IOWA
Employer

OC: 02/10/19
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Danielle Butler filed a timely appeal from the February 27, 2019, reference 01, decision that held she was disqualified for benefits and the employer's account would not be charged for benefits, based on the deputy's conclusion that Ms. Butler was discharged on December 14, 2018 for violation of a known company rule. After due notice was issued, a hearing was held on March 26, 2019. Ms. Butler participated. The employer did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. Exhibit A was 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: Danielle Butler was employed by Catholic Health Initiatives – Iowa, doing business as Mercy Medical Center in Des Moines, as a part-time, on-call (prn) phlebotomist from July 2018 until December 12, 2018, when the employer discharged her from the employment. The employer's decision to discharge Ms. Butler from the employment was based on Ms. Butler's refusal to get a flu shot. Ms. Butler's duties involved going to patients' hospital rooms to draw blood for lab analysis. Ms. Butler believed that a 2016 illness that occurred subsequent to getting a flu shot was related to getting a flu shot. However, Ms. Butler's illness at the time was treated with an antibiotic, rather than an anti-viral medication, and may or may not have been related to the flu shot. On December 12, 2018, a safety department representative told Ms. Butler that she either had to get the flu shot or present a note from her doctor indicating why she could not get a flu shot. Ms. Butler misinterpreted the employer's request for a medical note as employer overreach and breach of her privacy. Ms. Butler volunteered to wear a face mask at work during flu season in lieu of getting a flu shot. The employer told Ms. Butler that the employer's policy required that everyone get a flu shot and that Ms. Butler would have to separate from the employment during the flu season if she was unwilling to comply with the policy. The employer told Ms. Butler that she could reapply after the flu season ended.

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).

Continued failure to follow reasonable instructions constitutes misconduct. See *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985).

The evidence in the record establishes a discharge for no disqualifying reason. The employer did not participate in the appeal hearing and presented no evidence to meet its burden of proving disqualifying misconduct in connection with the employment. Given the hospital setting and the nature of Ms. Butler's duties, the employer had a reasonable basis for directing Ms. Butler to either get a flu shot or provide medical documentation establishing that it would place her at increased medical risk to get a flu shot. Ms. Butler's refusal to choose one of those options was unreasonable. The employer's request for medical documentation supporting Ms. Butler's assertion that she could not get the flu shot was not a request for unfettered access to Ms. Butler's medical records. While Ms. Butler did not have the burden of proof in this matter, she presented insufficient evidence to establish a causal connection between the flu shot she got in 2016 and the illness that followed. While Ms. Butler's refusal to comply with the employer's directive was unreasonable, the evidence does not establish a pattern of unreasonable refusal to comply with reasonable directives. Ms. Butler is eligible for benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits.

DECISION:

The February 27, 2019, reference 01, decision is reversed. The claimant was discharged on December 14, 2018 for no disqualifying reason. The claimant is eligible for benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs