IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

MICHAH J LUETHJE Claimant **GENESIS DEVELOPMENT** Employer	**APPEAL 18A-UI-06177-DL-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 05/13/18** **Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 30, 2018, (reference 01), unemployment insurance decision that allowed benefits based upon a discharge from employment. After due notice was issued, a telephone conference hearing was held on June 20, 2018. Claimant participated. Employer participated through director of services Justin Terry. The administrative law judge took official notice of the administrative record, including fact-finding documents and benefit payment records. The parties' documents were not admitted to the hearing record because they were not exchanged according to the hearing notice instructions.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed most recently as a full-time production worker in laundry services since February 2018. He had also held a management position as a residential coordinator in 2017, and was then demoted to middle management as a team leader in January 2018. The separation date was May 9, 2018. A May 8 state audit was conducted and it revealed that three electronic documents (EDOC) were incomplete for a specific member (individual with developmental disabilities) with Medicaid funding. This caused the employer $538.00 in lost reimbursement. Before he was demoted to production worker three months earlier in February 2018, he turned in EDOCs to the front desk and head programmer, and told them he had completed them three times because they disappeared twice. He told them to let him know if there were problems with the most recent submission. They did not. The employer knew of inadequate documentation issues between January 3 and 7, 2018, and instructed claimant three times to get that done. Terry took his word that the EDOCs were complete and did not verify the information until the state audit on May 8. Claimant was unaware of the continuing nature of the issue until his separation date.

He had not used EDOC since his demotion to production worker. Claimant had not been warned his job was in peril about failure to timely or completely submit EDOCs, but he was verbally warned on November 13, 2017, about not addressing similar issues with subordinate staff. The employer had not previously warned claimant in writing his job was in jeopardy for

any similar reasons. The issue was not addressed in the performance improvement plan issued on September 29, 2017, but he was asked to "update EDOC procedures to ensure proper documentation." He had been approved for intermittent Family and Medical Leave Act (FMLA) leave on February 21, 2018, because of personal issues related to his daughter's medical problems. (Administrative record.)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:

> **Causes for disqualification.**
>
> 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 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. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

Misconduct "must be substantial" to justify the denial of unemployment benefits. *Lee*, 616 N.W.2d at 665 (citation omitted). "Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." *Id.* (citation omitted). …the definition of misconduct requires more than a "disregard" it requires a "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." Iowa Admin. Code r. 871–24.32(1)(a) (emphasis added).

Iowa Admin. Code r. 871-24.32(8) provides:

> (8) *Past acts of misconduct.* 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 on such past act or acts. The termination of employment must be based on a current act.

A lapse of 11 days from the final act until discharge when claimant was notified on the fourth day that his conduct was grounds for dismissal did not make the final act a "past act." Where an employer gives seven days' notice to the employee that it will consider discharging him, the date of that notice is used to measure whether the act complained of is current. *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988). An unpublished decision held informally that two calendar weeks or up to ten work days from the final incident to the discharge may be considered a current act. *Milligan v. Emp't Appeal Bd.*, No. 10-2098 (Iowa Ct. App. filed June 15, 2011).

Whether an employee violated an employer's policies is a different issue from whether the employee is disqualified for misconduct for purposes of unemployment insurance benefits. *See Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000) ("Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." (Quoting *Reigelsberger*, 500 N.W.2d at 66.)).

Inasmuch as the employer knew about the issue in January 2018, and did not confront or otherwise follow up with claimant until the state audit, the delay of two months indicates the employer has not established a current or final act of misconduct. Furthermore, claimant's testimony is credible that he submitted the EDOCs after having difficulty with the system and did not receive feedback that the documents were inadequate. Finally, inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. A warning for failure to supervise is not similar to a failure to complete documentation and the accrual of a certain number of warnings counting towards discharge does not establish repeated negligence or deliberation and is not dispositive of the issue of misconduct for the purpose of determining eligibility for unemployment insurance benefits.

DECISION:

The May 30, 2018, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/rvs