IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

RECA E SNOOK
Claimant

GRINNELL REGIONAL MEDICAL CENTER
Employer

APPEAL NO. 14A-UI-12817-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/16/14
Claimant: Respondent (1)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct
871 IAC 24.32(8) – Current Act Requirement

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 4, 2014, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on an Agency conclusion that the claimant was discharged for no disqualifying reason. After due notice was issued, a hearing was held on January 15, 2015. Claimant participated. Matt Byrd represented the employer and presented additional testimony through Deb Nowachek. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits Two through Five into evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

Whether the discharge was based on a current act.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Reca Snook was employed by Grinnell Regional Medical Center (GRMC) as a full-time radiology technologist from 1995 until October 20, 2014, when the employer discharged her from the employment for pushing the emergency stop button on the employer's MRI machine on September 2, 2014. Ms. Snook was not authorized to push the emergency stop button. The emergency stop button was located under a Plexiglas protective cover. Ms. Snook pushed the button in an attempt to silence the alarm the machine was emitting. There was another button available to silence the alarm. Ms. Snook was authorized to silence the alarm, but not authorized to push the emergency stop button. By pushing the emergency stop button, the MRI machine "quenched" helium from the machine, which rendered the machine inoperable. Ms. Snook did not know that pushing the emergency stop button would result in the "quenching" process or that by pushing the emergency stop button she would render the MRI machine temporarily inoperable. The employer had been aware of problems with the machine before the

emergency stop button was pushed and had summoned maintenance personnel to address problems with the machine. By pushing the emergency stop button, Ms. Snook made the situation worse and caused further delays in medical evaluations while the machine was inoperable.

The employer first spoke to Ms. Snook about the matter on September 3, 2014. Prior to speaking with Ms. Snook, the employer had spoken to a GRMC MRI technologist to gain an understanding of the steps involved in the quenching sequence. The employer had also spoken to the MRI machine manufacturer to learn when the emergency stop button had been pushed. The employer had also confirmed that someone had indeed pushed the emergency stop button to initiate the quenching process. The employer spoke to Ms. Snook after learning that she had been on-duty at the time the button was pushed. At that time, Ms. Snook told the employer that she remembered entering the room to silence the alarm, remembered lifting the Plexiglas cover, but did not remember hitting the emergency stop button. Ms. Snook told the employer that the seal that secured the Plexiglas cover was already broken at the time she lifted the cover.

After the employer spoke with Ms. Snook on September 3, on that same day the employer spoke with Michelle Van Gorp, the other radiology tech who had been on duty at the time the emergency stop button was pushed. Ms. Van Gorp advised that she did not like to enter the MRI control room and would allow the alarms to sound.

On September 4, 2014, Ms. Snook left a voice mail message for the employer. Ms. Snook told the employer that she could not be certain that she did not push the emergency stop button. Ms. Snook referenced a prior workplace incident in which she could not accurately recall her own actions. Ms. Snook does not have any diagnosed memory impairment.

On September 9, 2014, the employer had its head of security review video surveillance to see who had entered the MRI control room close in time to when the emergency stop button was pushed. That surveillance revealed that Ms. Snook was the only person who entered the MRI control room close in time to when the emergency stop button was pushed. The employer received the head of security's written report within a week or two of September 9, 2014.

The employer waited until October 15, 2014 to meet with Ms. Snook again to discussion the matter. Ms. Snook was not on vacation at any time between September 2 and October 20, 2014. The employer told Ms. Snook about the time record indication when the emergency stop button was pushed and subsequently pulled back out. Ms. Snook told the employer that she remembered hitting buttons to silence the alarm and remembered lifting the Plexiglas panel. But Ms. Snook maintained that she did not *recall* pushing the emergency stop button.

On October 18, 2014, Ms. Snook left another message for the employer. Ms. Snook told the employer that she had been thinking about the matter and "in the still of the night" could remember that she did hit the emergency stop button. Ms. Snook said in her message that she hoped to salvage her career with GRMC.

On October 20, 2014, the employer again met with Ms. Snook to discharge her from the employment. The employer had concluded that Ms. Snook had been misleading the employer about not remembering hitting the emergency stop button. The employer had not previously said anything to put Ms. Snook on notice that she faced discharge in connection with the September 2, 2014 quenching incident. The employer first reviewed the information the

employer had previously shared with Ms. Snook. Ms. Snook apologized for pushing the emergency stop button, for causing downtime, and for the employer's expense in repairing the MRI machine. Ms. Snook offered to pay the $20,000.00 cost of refilling the machine with helium. The MRI machine had been inoperable for one and a half to two weeks.

REASONING AND CONCLUSIONS OF LAW:

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).

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). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The evidence in the record fails to establish a discharge based on a current act. The incident that triggered the discharge occurred on September 2, 2014 and came to the employer's attention that day. The employer initially addressed the matter with Ms. Snook on September 3. At that time, Ms. Snook gave an equivocal response that a reasonable person would have taken as an indication that she was the person who pushed the emergency stop button. The next day, Ms. Snook again provided an equivocal statement that a reasonable person would have taken as an indication that she was the person who pushed the emergency stop button. The employer delayed until September 9 to have the head of security review surveillance records to confirm it was Ms. Snook who accessed the MRI control room at the time the emergency stop button was pushed. The employer indicates that the employer received the report from the head of security within a week or two, which would place receipt of that report somewhere between September 16 and 23. The employer then waited three or four weeks to revisit the matter with Ms. Snook. The employer has failed to provide any reasonable basis for that extensive three to four-week delay. When the employer revisited the matter with Ms. Snook on October 15, the matter was no longer a current act. The employer had said nothing to Ms. Snook up to that point to put her on notice that her job was in jeopardy. Ms. Snook once again provided an equivocal statement that a reasonable person would have taken as an indication that Ms. Snook was the person who pushed the emergency stop button. Three days later, Ms. Snook provided an unequivocal statement that upon further reflection she had indeed pushed the button, but the employer had the information it needed long before that. Because there was not a reasonable basis for the three to four-week gap in the employer's action on the matter and because Ms. Snook was not told until the date of discharge that he employment was in jeopardy, the evidence fails to establish a current act of misconduct upon which disqualification for benefits might be based. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that the claimant was discharged for no disqualifying reason. Accordingly, the claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

The administrative law judge has carefully considered the evidence, including Ms. Snook's testimony and the circumstances surrounding the events in question. Even if the evidence had established a current act, the weight of the evidence does not establish that Ms. Snook deliberately misled the employer in her statements about her conduct. The weight of the evidence indicates that Ms. Snook was being genuine with the employer when she communicated to the employer that she could not remember pushing the emergency stop button, but could not rule out that she had done so. There was no intent on the part of Ms. Snook to willfully or wantonly disregard the interests of the employer, and therefore, no disqualifying misconduct.

DECISION:

The December 4, 2014, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

_____
James E. Timberland
Administrative Law Judge

_____
Decision Dated and Mailed

jet/pjs