

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DEBORAH L KOOPMAN**  
Claimant

**APPEAL NO. 08A-UI-08549-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AREA RESIDENTIAL CARE INC**  
Employer

**OC: 08/24/08 R: 04  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Deborah Koopman filed a timely appeal from the September 17, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on October 10, 2008. Ms. Koopman participated and was represented by John Rosenthal, Business Agency for Local 120. Jean Wuertzer, Vocational Services Director, represented the employer.

**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: The employer is a non-profit agency that provides residential and vocational services to mentally and/or physically disabled clients. Deborah Koopman was employed by Area Residential Care as a part-time Instructor 2 from June 15, 2000 until August 26, 2008, when she resigned in lieu of being immediately discharged from the employment.

On June 24, 2008, Ms. Koopman had been responsible for completing a “ridership form” by checking off consumers as they arrived at the vocational services facility. The primary purpose of the form was to document the consumer’s arrival for billing purposes. However, ensuring the safe arrival of the consumers was also a significant and integral purpose of the check-in procedure. From where Ms. Koopman was standing when she observed clients coming off a the bus on June 18, 2008, Ms. Koopman did not see a particular autistic female consumer get off the bus and immediately get back on. Ms. Koopman did not think the female consumer had arrived at all. Ms. Koopman knew that the consumer was someone who was expected to arrive at the facility by means of the bus. Ms. Koopman went to the vocational services room where the particular consumer usually received services, noted that the worker present was someone other than the usual worker in that room, and decided not to say anything to that worker about the consumer’s absence. Ms. Koopman did not say anything to anyone else about the consumer’s absence. The consumer had stayed on the bus without the bus driver being aware. The consumer was on the bus for several hours before the bus driver re-entered the bus to

begin the trip to collect consumers from the vocational facility at the end of the day. The consumer caught the bus driver's attention when she stood up during the trip to the vocational services facility. The bus driver alerted the vocational services facility of the consumer's presence on the bus and left the consumer at the vocational services facility. The employer contacted the consumer's family and commenced an investigation in to the matter. The employer also reported the matter to the Department of Human Services as part of the mandatory reporting procedure.

When Ms. Koopman arrived the next day, Vocational Services Director Jean Wuertzer, Supervisor Al Pecina and Human Resources Manager Terry Pitzen interviewed Ms. Koopman about the incident. Ms. Koopman indicated where she had checked consumers off as usual, indicated that she had observed that the female consumer had not got off the bus, and indicated that she had intended to mention the consumer's absence to other staff. Ms. Koopman indicated that she had gotten busy with her other duties and had forgotten to follow up with anyone regarding the absent consumer.

On June 24, Ms. Wuertzer met with Ms. Koopman for the purpose of disciplining her in connection with the June 18 incident. The employer did not believe that Ms. Koopman had intentionally failed to ensure to the safe arrival of the resident. The employer did not have a formal protocol for the check in procedure until after the June 18 incident. Because of the seriousness of the situation, the employer placed Ms. Koopman on disciplinary probation for three months. The employer did not intend to discharge Ms. Koopman from the employment.

The Department of Human Services (DHS) conducted its own investigation. On August 25, 2008, the employer received a report from DHS. The DHS report indicated a founded incident of dependant adult abuse and named Ms. Koopman as the person responsible. Under state regulations, and under the employer's established policy, a person with a founded abuse report could not perform work for the employer. The employer summoned Ms. Koopman to a meeting and gave her the choice of resigning or being immediately discharged from the employment. Ms. Koopman resigned.

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

871 IAC 24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

In analyzing quits in lieu of discharge, the administrative law judge considers whether the evidence establishes misconduct that would disqualify the claimant for unemployment insurance benefits.

The evidence in the record indicates that Ms. Koopman did not voluntarily quit the employment, but instead resigned in lieu of being immediately discharged.

Iowa Code section 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.

871 IAC 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.

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 indicates that Ms. Koopman was aware as of June 19, 2008 that the seriousness of the incident could lead to her being discharged from the employment. The evidence indicates that Ms. Koopman was also aware that a DHS founded abuse report would result in her discharge from the employment. The greater weight of the evidence establishes a “current act.” See 871 IAC 24.32(8).

The weight of the evidence in the record indicates that Ms. Koopman was negligent in performing her duties on June 18, 2008, when she failed to ensure the safe arrival of the female resident and, more importantly, when she failed to alert anyone else to the absence of the resident. The evidence establishes no other incidents of similar negligence and/or carelessness. This isolated incident of negligence fails to establish misconduct in connection with the employment that would disqualify Ms. Koopman for unemployment insurance benefits.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Koopman was discharged for no disqualifying reason. Accordingly, Ms. Koopman is eligible for benefits, provided she is otherwise eligible. The employer’s account may be charged for benefits paid to Ms. Koopman.

**DECISION:**

The Agency representative’s September 17, 2008, reference 01, decision is reversed. 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.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs