IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

SHANNON K MILLER Claimant **POCAHONTAS COMMUNITY HOSPITAL** Employer	**APPEAL NO. 21A-UI-15106-JTT** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 04/18/21** **Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant, Shannon Miller, filed a timely appeal from the June 24, 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 April 20, 2021 for violation of a known company rule. After due notice was issued, a hearing was held on August 26, 2021. Claimant participated. Julie Harrison represented the employer and presented additional testimony through Sarah Weltzheimer, James Roetman, and Julie Harrison. Exhibits 1 through 10 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: The claimant was employed by Pocahontas Community Hospital as a full-time Medical Lab Tech (MLT) from October 2019 until April 20, 2021, when James Roetman, Chief Executive Officer, discharged her from the employment. The claimant's core work hours were 7:00 a.m. to 5:00 p.m. The claimant was also on call during some weekends. From August 2020 to the end of the employment, Sarah Weltzheimer, Lab Manager, was the claimant's supervisor. Prior to that, Jamie Kaufman, Lab Manager, was the claimant's supervisor. The claimant's duties included collecting body specimen samples such as blood and urine, running tests on the specimens, reporting outcomes to medical providers, calibrating and trouble-shooting test instruments, drug testing, and answer the telephone calls mostly from unit clerks but never from a medical provider.

When the claimant began in the employment, the employer went through an orientation process with the claimant. As this was the claimant's second period of employment with the employer, the claimant was already familiar with many of the orientation included on the orientation checklist. The employer provided the claimant with a Standards of Behavior policy statement.

They provided the claimant with online access to an employee handbook and to hospital-wide policies.

On April 20, 2021, Mr. Roetman participated in a medical staff meeting. During the meeting, one or more physician's requested that the claimant no longer answer the phone when the physician's staff call. One or physician's alleged that the claimant was rude on the phone, but did not cite any specific incident of rudeness. The employer cites this complaint as the final incident that triggered the discharge.

On Saturday, April 17, 2020, the claimant was called in to assist with patient care. While the claimant was performing work, a nurse told the claimant that if the claimant was called in again that morning, that a doctor wants an early morning blood draw and test result on a patient. The claimant replied "and I want a million dollars." The claimant's utterance was part of a moment of levity in which the claimant and the nurse participated. The claimant was not called in early, but reported early for her 7:00 a.m. so she could perform the blood draw. The claimant arrived at 6:30 a.m., did that blood draw and others, and went about running the appropriate tests, but ran into equipment issues that delayed the test result until after 8:00 a.m. The claimant updated the nurse on the equipment-related delay. The doctor was displeased with having to wait for the test result.

On another weekend in March 2021, the claimant collected a urine specimen and completed with the physician's directive to have the specimen cultured. On the next day, a different physician was treating the same patient and requested a urine specimen. The physician advised the claimant that the patient was already on antibiotics, but that the physician wanted the urine culture to determine the best treatment. At a later date, a nurse or other staff member alleged to Ms. Weltzheimer that the claimant had said it was not part of her job to facilitate the urine test. The claimant categorically denies that she had said such testing was not part of her job or that she would ever utter such a statement.

Ms. Weltzheimer references a concern in January 2021 wherein she asserts the claimant made a new lab tech uncomfortable by not training the tech. Ms. Weltzheimer does not know or does not recall the details. The claimant did indeed provide the tech training and included training on the chemical analyzer that Ms. Weltzheimer personally found helpful.

Ms. Weltzheimer cites another incident on a Friday in January 2021, wherein the claimant left at about noon after indicating she was feeling ill. The claimant has a chronic health condition that causes her to experience pain and left in response to experiencing pain without going into details about her pain. Ms. Weltzheimer voiced her displeasure with the claimant's departure. In response to that, the claimant obtained a note from her health care provider that said she needed to be accommodated with a 36-hour work week.

In making the decision to discharge the claimant from the employment, the employer also considered two concerns from April 2020. In one instance, the claimant asked "What are the pigs here?" as she entered the lab. The utterance was in response to law enforcement officers being present at the hospital. Lab Manager Jaime Kaufman counseled the claimant regarding the non-professional utterance. The employer issued a written reprimand and suspended the claimant in response to a HIPAA violation that arose when the claimant stated in the waiting room area that she is full personal protective equipment (PPE) due to a patient's suspected COVID-19 illness. There were no subsequent HIPAA issues involving the claimant.

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).

An employer has the right to expect decency and civility from its employees. *Henecke v. Iowa Department of Job Service*, 533 N.W.2d 573 (Iowa App. 1995).

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 presented insufficient evidence, insufficiently direct and satisfactory evidence, to provide a current act of misconduct. Mr. Roetman's meeting with the physician's involved a general allegation of rudeness on the part of the claimant without reference to a specific incident. The employer presented insufficient evidence to rebut the claimant's assertion that she did not receive calls from physicians. The employer presented insufficient evidence to rebut the claimant's testimony regarding the context of her "and I want a million dollars" utterance and the delayed blood test result that the claimant attributes to an equipment malfunction and about which the claimant asserts she provided updates. The other concerns that factored in the discharge were not current acts at the time of the discharge and cannot serve as a basis for disqualifying the claimant for benefits in the absence of a current act of misconduct. These included the concern about the urine specimen, which provides another instance in which the employer presented insufficient evidence to rebut the claimant's testimony and a similarly problematic allegation concerning whether the claimant trained a new staff member. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The June 24, 2021, reference 01, decision is reversed. The claimant was discharged on April 5, 2021 for no disqualifying reason. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.

James E. Timberland
Administrative Law Judge

August 31, 2021
Decision Dated and Mailed

jet/scn