

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TNIA A HAWKINS

Claimant

APPEAL NO. 22A-UI-01362-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TANAGER PLACE & CAMP TANAGER

TANAGER PLACE

Employer

OC: 11/21/21

Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 8, 2021, reference 01, decision that allowed benefits to the claimant, provided the claimant met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on November 17, 2021 for no disqualifying reason. After due notice was issued, a hearing was held on February 7, 2022. The claimant, Tnia Hawkins, did not comply with the hearing notice instructions to call the designated number at the time of the hearing and did not participate. Jennifer Stansberry represented the employer and presented additional testimony through Beth Hall. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1 and 2 into evidence. The administrative law judge took official notice of the Iowa Workforce Development record documenting the employer's participation in the fact-finding interview.

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, Tnia Hawkins, was employed by Tanager Place & Camp Tanager as a full-time Youth Services Worker from February 2021 until November 24, 2021, when the employer discharged her from the employment for violation of the employer's COVID-19 safety protocol and for receiving a second reprimand within a 90-day period. Stacia Winters, Cottage Supervisor, was the claimant's immediate supervisor.

On the evening of November 16, 2021, the claimant notified her supervisor by text message that she would be unable to report for work on November 17, 2021 due to illness. The claimant wrote:

Just Texting Because Idk If I'll Be Able to Make It To Work Tomorrow. I Cannot Breathe Out Of My Nose And Cant Smell Anything. I've Had Nose Bleeds All throughout the Day And Can Barely Walk Around My House Without Feeling Like I'm Going to Faint.

The claimant's message did not prompt the supervisor to inquire further regarding whether the claimant's symptoms might be related to COVID-19. The claimant's supervisor replied by text message, "Okay can your try finding coverage." At 12:15 a.m. on November 17, 2021, the claimant responded: "Yup Still Want Me In Class.? I Need To Go To Class" The supervisor promptly replied, "Yea you need to go you can't miss class." The claimant responded "Kk."

The employer had a COVID-19 screening protocol throughout the period of the claimant's employment. Upon arrival at the workplace, the claimant was required to report to the employer's main building and complete a COVID-19 self-assessment questionnaire. Under the protocol, the employer sends employees home if they answer yes to having two or more COVID-19 related symptoms. If an employee has only one symptom, such as a cough, the employer would not send the employee home if the employee provided some other reasonable explanation for the cough. If an employee reported symptoms, a nurse would administer a COVID-19 test and determine whether the claimant would be allowed to stay at work pending the test result or be sent home pending the test result. The employer's COVID-19 protocol, also required employees to wear masks in the workplace to hinder transmission of COVID-19.

On November 17, 2021, the claimant reported to the workplace for the purpose of attending the training class her supervisor had directed her to attend. The claimant completed a COVID-19 self-assessment questionnaire and answered yes to several screening questions that were supposed to prompt an assessment by a nurse. The claimant left her questionnaire on the nurse's desk and reported for her training meeting. Once the training meeting concluded, the claimant went to her assigned cottage. While the claimant had been at the workplace, the nurse discovered the claimant's COVID-19 screening questionnaire on her desk. The nurse located the claimant, administered a COVID-19 test, and sent the claimant away from the workplace while the employer waited to receive the claimant's COVID-19 test result. On or about November 21, 2021, the employer received the claimant's COVID-19 test result, which indicated the claimant was positive for COVID-19. On November 24, 2021, prior to the claimant's next scheduled shift, the employer discharged the claimant from the employment.

In September 2021, the employer issued a written reprimand to the claimant for failure to complete required training in a timely manner.

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 Iowa Admin. Code r.871 -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).

In considering an understanding or belief formed, or a conclusion drawn, by an employer or claimant, the administrative law judge considers what a reasonable person would have concluded under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993).

The evidence in the record establishes a discharge for no disqualifying reason. The claimant's November 16, 2021 text message to the supervisor put the employer on notice that the claimant was ill and would have prompted a reasonable supervisor to inquire further regarding whether the claimant's symptoms might be COVID-19 related before directing the claimant to report to the workplace on November 17, 2021. The supervisor was careless and negligent in failing to make that further inquiry before directing the claimant to report to the workplace. But for the supervisor's directive, the claimant would not have reported to the workplace on November 17, 2021. The evidence indicates the claimant was mindful of the prior reprimand for failure to complete training in a timely manner and that this prompted her inquiry regarding whether she should report to the workplace on November 17, 2021. The supervisor reinforced that the claimant needed to appear. The claimant made an error in judgment by leaving her COVID-19 screening questionnaire on the nurse's desk without prompting a further assessment. That prompts the unanswered question of where the nurse was and why she was not present to facilitate the COVID-19 screening. The claimant made a further error in judgment by reporting to her assigned cottage after the training meeting. However, the evidence does not establish that the claimant acted with a willful and wanton disregard of the employer's interests. Accordingly, the claimant's actions do not rise to the level of misconduct in connection with the employment. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The December 8, 2021, 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

February 28, 2022
Decision Dated and Mailed

jet/scn