

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELA A HUGHES

Claimant

APPEAL NO. 15A-UI-04238-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHRISTIAN RETIREMENT HOMES INC

Employer

OC: 03/08/15

Claimant: Respondent (2)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct
Iowa Code Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 26, 2015, reference 01, decision that 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 had been discharged on March 13, 2015 for no disqualifying reason. After due notice was issued, a hearing was held on May 14, 2015. Claimant Angela Hughes participated. Pam Thompson represented the employer and presented additional testimony through Sherry Rodrigues. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1 through 24 into evidence.

ISSUES:

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

Whether the claimant was overpaid benefits.

Whether the claimant is required to repay benefits.

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Angela Hughes was employed by Christian Retirement Homes, Inc. as part-time certified nursing assistant from 2005 until March 13, 2015; when the employer discharged her from the employment for a pattern of failing to complete required training in a timely manner. Ms. Hughes had transitioned from regular part-time status to on-call status at the beginning of 2015. Ms. Hughes had requested the change in status. Ms. Hughes was a full-time college student. Ms. Hughes last performed work for the employer on February 20, 2015. To maintain her on-call employment, Ms. Hughes was required to work eight hours per month. Ms. Hughes was required to contact the employer to provide her availability and to request to be put on the schedule.

Throughout Ms. Hughes' employment, the employer would assign training modules each month that Ms. Hughes was required to complete within a month of the module being assigned. Ms. Hughes was required to complete 12 continuing education hours annually to maintain her nursing assistant certification. The employer's ongoing training module regimen facilitated fulfillment of this requirement and assisted the employer in maintaining appropriate standards of care. The modules would be posted to a website that Ms. Hughes was supposed to review on a regular basis. The training pertained to various aspects of patient care. The employer made computers available to Ms. Hughes in the workplace and compensated Ms. Hughes for time she spent at work completing the training modules. Ms. Hughes could also complete the computer-based training outside of work by remotely accessing the training website but the employer would not compensate her for time she spent on the training modules outside of the workplace. Each module was expected to take an hour to complete. The employer also expected Ms. Hughes to attend monthly CNA meetings. If Ms. Hughes did not attend the meeting, she was required to access and review the meeting notes concerning training provided at the meeting and to do that by a deadline set by the employer.

Ms. Hughes was well aware of the ongoing training requirements, but entered into a pattern of not completing the training in a timely manner. In June 2014, the employer issued a warning to Ms. Hughes for failure to complete two modules in a timely manner. One module concerned infection control and the other concerned one-on-one activities. The modules were due to be completed by May 31, 2014. Ms. Hughes completed the modules on June 8, 2014. The warning was also based on Ms. Hughes failure to review and acknowledge April 2014 CNA meeting notes by a May 31, 2014 deadline. Ms. Hughes completed that task on June 8, 2014. In July 2014, the employer issued a warning to Ms. Hughes for failure to complete two training modules that were due June 30, 2015. One pertained to personal protective equipment and the other pertained to managing challenging behavior in patients with Alzheimer's.

Ms. Hughes' failure to complete required training modules and review meeting notes in a timely manner continued after a changes in administration toward the end of 2014. The deadline for reviewing and acknowledging the October CNA meeting notes was November 30, 2014. Ms. Hughes completed the task on December 1, 2014. The deadline for completing the training modules concerning high quality dementia care and fraud, waste and abuse in direct care was December 31, 2014. The deadline for completing modules concerning strokes and accident prevention and management was January 31, 2015. The deadline for completing modules regarding station inspections and end of life issues was February 28, 2015. The deadline for completing a module concerning pericare was March 5, 2015. The deadline for reviewing notes from the January 27, 2015 CNA meeting was March 9, 2015. On March 10, 2015, Ms. Hughes completed the tasks that were due in December, January, February and early March.

On March 9, 2015, a friend and coworker notified Ms. Hughes that the employer was discharging employees for failing to complete training modules in a timely manner. The employer had recently put employees on notice that the employer would enforce the module completion deadlines, as well as the meeting note review deadlines, and that employer would take disciplinary action if the deadlines were not met. The employer had given notice of an amnesty or grace period to expire March 3, 2015. On March 9, Ms. Hughes had contacted the employer's scheduler to request work hours, but the scheduler told her that she would need to speak to Director of Staff Development, Pam Thompson, before she could be placed on the scheduled. Ms. Hughes contacted Ms. Thompson for assistance in remotely accessing the website she needed to use to complete the several assigned tasks. By March 10, 2015, Ms. Hughes was caught up on her training.

On March 13, 2015, Sherry Rodriguez, Director of Human Resource, telephoned Ms. Hughes to arrange a meeting to occur the following Monday. The employer had by that time made the decision to discharge Ms. Hughes from the employment. Ms. Hughes refused to meet with the employer if the purpose of the meeting was to discharge her from the employment. Ms. Rodriguez notified Ms. Hughes that she was discharged from the employment. The employer followed up with written notice of the discharge.

Ms. Hughes established a claim for benefits that was effective March 8, 2015. Ms. Hughes has received \$2601 in benefits for the nine-week period of March 8, 2015 through May 9, 2015.

On March 24, 2015, a Workforce Development claims deputy held a fact-finding interview to address Ms. Hughes separation from the employment. Ms. Thompson and Ms. Rodriguez participated in the fact-finding interview on behalf of the employer.

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 establishes a pattern of conduct on the part of Ms. Hughes whereby she elected not to complete required training in a timely manner. The employer reasonably expected Ms. Hughes to complete the assigned training in a timely manner. The employer provided reasonable opportunity for timely completing when assigning the training tasks. Ms. Hughes' conduct continued over an extended period. It continued despite multiple warnings and other notice that the conduct could lead to discipline or discharge. The weight of the evidence indicates that Ms. Hughes' status as a full-time student did not prevent her from completing the required training in a timely manner. The weight of the evidence fails to support Ms. Hughes' assertion that she and the prior Director of Staff Development had agreed that Ms. Hughes would not be held to completion deadlines. At the time Ms. Hughes completed her training modules on March 10, 2015, she was months behind in completing the training. The weight of the evidence indicates that Ms. Hughes was at all times well aware of what was required of her and of her obligation to review the website for assigned training and complete the assigned training.

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).

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Hughes was discharged for misconduct. Ms. Hughes' long pattern of electing not to complete required training in a timely manner constituted insubordination. The pattern was sufficient to indicate a willful and wanton disregard for the employer's interests in maintaining proper standards of care. Accordingly, Ms. Hughes is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

The unemployment insurance law requires that benefits be recovered from a claimant who receives benefits and is later deemed ineligible benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a, -b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid \$2601 in benefits for the nine-week period of March 8, 2015 through May 9, 2015. Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

DECISION:

The March 26, 2015, reference 01, decision is reversed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements. The claimant was overpaid \$2601 in benefits for the nine-week period of March 8, 2015 through May 9, 2015. The claimant is required to repay the overpayment. The employer's account will be relieved of liability for benefits, including liability for benefits already paid.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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