

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THERESA M PRATT
Claimant

APPEAL NO. 17A-UI-10338-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABCM CORPORATION
Employer

OC: 09/10/17
Claimant: Appellant (2)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct
Iowa Administrative Code Rule 871-24.32(9) - Suspension

STATEMENT OF THE CASE:

Theresa Pratt filed a timely appeal from the October 4, 2017, reference 01, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on the claims deputy's conclusion that Ms. Pratt was on a disciplinary suspension effective August 28, 2017 for violation of company rules. After due notice was issued, a hearing was held on October 26, 2017. Ms. Pratt participated. The employer did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. Exhibit A was received into evidence.

ISSUE:

Whether Ms. Pratt was suspended for misconduct in connection with the employment that disqualifies her for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Theresa Pratt, L.P.N., is employed by ABCM Corporation, d/b/a Rolling Green Village, as a full-time charge nurse. Ms. Pratt began the employment in 2007 and continues in the employment at this time. Janet Tuttle, Director of Nursing, is Ms. Pratt's immediate supervisor. Sherry Hughes is Administrator at Rolling Green Village.

On August 28, 2017, Ms. Tuttle and Ms. Hughes suspended Ms. Pratt pending the outcome of the employer's investigation and the Iowa Department of Inspections and Appeals' investigation of an allegation that Ms. Pratt had abused a dependent adult resident on August 20, 2017. On August 20, 2017, Ms. Pratt administered oral medication to an elderly nursing home resident who suffers from severe dementia. The resident had communicated through her son that the resident was in terrible pain. Ms. Pratt administered the medication in the facility's dining room area. As Ms. Pratt administered an oral pain medication, the resident became confused and began to act as if she would spit out the medication. To ensure the resident received the needed pain medication, Ms. Pratt momentarily placed the resident's clothing protector or bib over the resident's mouth and coaxed the resident into swallowing the medication. At that point, the resident understood and swallowed the medication. Ms. Pratt did not think anything more of the matter and went about her duties.

On August 28, Ms. Tuttle and Ms. Hughes notified Ms. Pratt that a dependent adult abuse report had been made that day. Ms. Pratt believes that a kitchen staff member made the allegation and further believes that the allegation was in retaliation for her supervision of the kitchen staff. By the time the abuse allegation was made eight days following the alleged incident, the employer's video surveillance record that documented Ms. Pratt's behavior had been automatically deleted by the employer's video surveillance system.

The Iowa Department of Inspections and Appeals completed its investigation on October 19, 2017 and found the allegation of dependent adult abuse to be unfounded. Ms. Pratt was reinstated to the employment on October 19, 2017. Ms. Pratt does not know when the employer concluded its investigation.

REASONING AND CONCLUSIONS OF LAW:

Iowa Administrative Code rule 871-24.32(9) provides as follows:

Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

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 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 employer did not participate in the hearing and presented no evidence to establish misconduct in connection with the employment. The evidence in the record establishes a stale, unfounded allegation of dependent adult abuse. The evidence in the record fails to establish misconduct in connection with the employment. Ms. Pratt was suspended on August 28, 2017 for no disqualifying reason. Accordingly, Ms. Pratt is eligible for benefits for the period of the suspension, provided she is otherwise eligible. The employer's account may be charged.

DECISION:

The October 4, 2017, reference 01, decision is reversed. The claimant was suspended on August 28, 2017, for no disqualifying reason. The claimant is eligible for benefits for the period of the suspension, provided she is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs