

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LATRICIA R GREER**  
Claimant

**APPEAL NO: 06A-UI-08634-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JACKSON RECOVERY CENTERS INC**  
Employer

**OC: 07/23/06 R: 01  
Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

Jackson Recovery Centers filed a timely appeal from the August 17, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on September 12, 2006. Claimant Latricia Greer participated. Barb Buss of Cambridge Integrated Services represented the employer and presented testimony through Mary Samuelson, Vice President of Clinical Services. The administrative law judge took official notice of the Agency's records regarding benefits disbursed to the claimant.

**ISSUE:**

Whether the claimant was discharged for misconduct that disqualifies her for unemployment insurance benefits. She was not.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Latricia Greer was employed by Jackson Recovery Centers as an Addictions Tech until July 26, 2006, when Mary Samuelson, Vice President of Clinical Services, discharged her.

The final incident that prompted the discharge came to the attention of the employer on July 25. At that time, another employee reported to the employer that Ms. Greer had received a letter from a client in which the client asked Ms. Greer to go on a date with him. The employer does not assert that Ms. Greer went on a date with the client or that she indicated acceptance of the offer. The employer never looked at the letter to see what it actually said. The employer cannot locate the letter in its records. The employer asserts that this incident regarding the letter was part of a pattern wherein Ms. Greer failed to maintain appropriate boundaries with clients and/or "over identified" with clients. Ms. Greer's credentials are a general education diploma. The employer provided Ms. Greer with no formal training regarding establishing and maintaining appropriate boundaries with clients. Instead, the employer addressed specific situations as Ms. Greer's coworkers brought concerns to the employer's attention. The complaining coworkers did not testify at the hearing.

Ms. Greer kept a copy of the letter in question, but did not make it available for the hearing. Ms. Greer asserts the client did not in fact ask her for a date. Ms. Greer asserts, instead, that the letter was from a former client requesting that a letter documenting his participation in programming be sent to his attorney. Ms. Greer further indicates that she followed established practices in providing the letter to the client. Ms. Greer kept a copy of the letter she prepared for the former client with the assistance of a coworker.

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

The question is whether the evidence in the record establishes that Ms. Greer was discharged for misconduct in connection with the employment. It does not.

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 weight of the evidence in the record fails to establish misconduct. The evidence presented by the employer consisted of unsupported and/or uncorroborated allegations. The employer had the ability to present more direct and satisfactory evidence than was presented. Such evidence might have taken the form of testimony from the employee who reported the alleged love letter to the employer. Such evidence might also have taken the form of the letter itself, provided the employer appropriately documented the final event that prompted the discharge. The administrative law judge concludes that more direct and satisfactory evidence would likely have revealed further deficiencies in the employer’s case. See 871 IAC 24.32(4). See also Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976). The evidence fails to establish a current act of misconduct that might serve as a basis for discharging Ms. Greer. See 871 IAC 24.32(8). Even if the record had established a “current act,” the evidence in the record indicates that the employer provided insufficient training to Ms. Greer to assist her in understanding and implementing appropriate boundaries with clients.

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

**DECISION:**

The Agency representatives August 17, 2006, 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.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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