

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**SUSAN KRIENER**

Claimant

**PRAIRIE VIEW MANAGEMENT INC**

**PRAIRIE VIEW**

Employer

**APPEAL NO: 21A-UI-05623-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/06/20**

**Claimant: Appellant (2)**

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Iowa Code § 96.5(2)(a) – Discharge  
Iowa Admin. Code r. 871-24.32(8) – Current Act Requirement

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the February 8, 2021, reference 02, decision that disqualified her for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant was discharged on December 4, 2020 for failure to follow instructions in the performance of her job. After due notice, an appeal hearing was held on April 27, 2021. The claimant participated. Nick Reiersen, Human Resources Specialist, represented the employer. Exhibit A, the online appeal, was received into evidence.

**ISSUES:**

Was the claimant discharged for misconduct in connection with the employment?  
Whether the discharge was based on a current act.

**FINDINGS OF FACT:**

The claimant was employed by Prairie View Management, Inc. as a full-time Community Support Assistant (CSA) from July 2019 until December 4, 2020, when the employer discharged her from the employment. The claimant provided services to dependent adults in a residential group home environment. The claimant generally worked three 12-hour shifts per week. The clients the claimant served had mental illness issues. Some clients had prior substance use issues. The claimant was promoted from CSA 1 to CSA 2. The claimant's duties as a CSA 2 included ensuring general supervision and safety of the clients, budgeting for individual clients, which included balancing the client's checkbook, prompting clients to take medications as prescribed, facilitating medical appointments as needed, assisting clients with meeting goals identified in their plan of care, and housekeeping. Rhonda Woltzen, Site Coordinator, was the claimant's immediate supervisor. The claimant was at all relevant times aware of the employee work rules, which included maintaining a professional relationship with clients, including appropriate boundaries, and treating clients with respect and dignity.

On or about November 30, 2020, a coworker, CSA Leanne Rahlf, reported to Kiera Roberts, Director of Community Based Services, concerns she had about the claimant. The concerns pertained to events that allegedly occurred months earlier during the summer of 2020. Ms. Rahlf alleged the claimant had on one occasion called the group home/workplace drunk, had remained on the phone for 40 to 45 minutes, and during that call had stated that she knew a couple of the clients wanted to have sex with her. Ms. Rahlf further alleged that clients were aware of the claimant's personal affairs and that one had opined about the claimant reuniting with her boyfriend. The claimant does not deny that she called the workplace while intoxicated, but attempts to excuse the conduct by stating that she went through a bad period during which she might have been "self-medicating" with alcohol. The claimant advises that she spoke with a coworker in the workplace regarding her personal affairs and that clients may have wandered within earshot of the conversations. The conduct alleged by Ms. Rahlf, if true, would have violated the employer's policy regard maintaining professional boundaries.

In response to the concerns Ms. Rahlf brought forward, the employer suspended the claimant effective November 1, 2020, pending further investigation. As part of the investigation, Ms. Roberts interviewed CSA Chelsea Gerleman, who alleged that clients had complained to her about the claimant, that one client in particular did not look forward to the claimant working, and that another client stated the claimant was not nice. Ms. Roberts interviewed Ms. Woltzen, and other staff who were unaware of concerns regarding the claimant's conduct. Ms. Roberts interviewed CSA Diana Bisping, who worked in a nearby group home and who alleged that when she would go to the claimant's assigned group home to get the work van keys, the claimant would usually be on the couch with a book. Ms. Bisping alleged that clients told her the claimant would yell at them to get out of bed.

Ms. Roberts interviewed clients and heard an allegation that the claimant had a "pissy" attitude, an allegation that the claimant was in the habit of reclining in a recliner under a blanket with a book in hand, and an allegation that the claimant denied a client the opportunity to go shopping. Additional allegations concerned the claimant speaking about her boyfriend problems. One client alleged the client had come into the room while the claimant and a client were under a blanket on the couch and that they were startled when the client walked into the room.

Ms. Roberts interviewed the claimant's supervisor, who denied knowledge of the concerns being brought forward.

Ms. Roberts interviewed the claimant as part of her investigation. The claimant denied that she had a sexual relationship with a client. The claimant denied that she yelled at clients, but conceded that she may have spoken to a client with a raised voice and may have threatened consequences when speaking with a client. The claimant denied that she had brought a book to work since receiving a reprimand for such conduct during the summer of 2020. The claimant advised that she would remain under a blanket at the start of her 6:00 a.m. shift until work began in earnest at 7:00 a.m.

The employer concluded that some of the allegations were unfounded, such as the allegation regarding the claimant being under a blanket with a client and startling when another client entered the room. The employer concluded that other allegations were credible. The employer concluded that the claimant had at some point reclined in a recliner during work hours, had at some point imposed restrictions on clients, had at some point failed to treat clients with respect and dignity, had months earlier and at some other point disclosed personal information to clients, and had earlier in the employment failed to properly monitor funds in a client's checking account, which led to a check being rejected due to insufficient funds in the account.

## 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).

The weight of the evidence in the record establishes a discharge for no disqualifying reason. The weight of the evidence fails to establish a discharge based on a current act. The employer elected not to present testimony from anyone with firsthand or even secondhand knowledge of the alleged events that factored in the discharge. A reasonable person would be hard-pressed to believe that the sundry allegations that factored in the discharge would not have come to the claimant's immediately supervisor's attention prior to Ms. Rahlf's months-late report to Ms. Roberts on or about November 30, 2020 and the investigation that followed. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.

**DECISION:**

The February 8, 2021, reference 02, decision, decision is reversed. The claimant was discharged on December 4, 2020 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.



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James E. Timberland  
Administrative Law Judge

August 31, 2021  
Decision Dated and Mailed

jet/kmj