

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

CHANTELLE A SCHAUBHUT
Claimant

APPEAL NO. 19A-UI-00275-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LUTHERAN SERVICES IN IOWA INC
Employer

OC: 12/16/18
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 9, 2019, reference 03, decision that held the claimant was eligible for benefits provided she met all other eligibility requirements and that the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on November 13, 2018 for no disqualifying reason. After due notice was issued, a hearing was held on January 28, 2019. Claimant Chantelle Schaubhut did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. Michael Collet represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant, which record reflects that the claimant received no benefits in connection with the December 16, 2018 original claim. Exhibits 1 through 6 were received 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 employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Chantelle Schaubhut was employed by Lutheran Services in Iowa, Inc. (LSI) as a full-time Direct Support Professional (DSP) from April 2017 until December 18, 2018, when Crystal Larson, Service Coordinator, and Michael Collet, Program Supervisor, discharged her from the employment for habitual neglect of essential duties. Ms. Schaubhut began her employment in April 2017. Ms. Schaubhut was assigned to a particular home where two to three people with disabilities resided. As a DSP, Ms. Schaubhut was responsible for providing support, assistance, and instruction to these LSI clients to help them work toward their individualized goals for personal growth, skill development, and maximum independence.

Documenting services, including documentation of progress toward goals, was an essential component of Ms. Schaubhut's DSP duties. The employer needed such documentation for developing care plans and monitoring progress on care plans. The employer needed such documentation to support its billing of funders, including Medicaid, for services rendered. The employer's standard called for all DSPs to complete relevant documentation with 72 hours of service encounter. Ms. Schaubhut was at all relevant times aware of the standard. Ms. Schaubhut received appropriate training regarding documentation of services rendered. The employer provided Ms. Schaubhut with a notebook computer for use in documenting services. Ms. Schaubhut was assigned to the 2:30 p.m. to 10:30 p.m. shift. There would ordinarily be time and opportunity for Ms. Schaubhut to perform necessary documentation during the shift. In the event Ms. Schaubhut required additional time to document services, the employer would pay Ms. Schaubhut her regular wage for completing the documentation at home or at the employer's office.

The employer's decision to discharge Ms. Schaubhut from the employment followed the employer's attempts over the course of several months to get Ms. Schaubhut caught up on her documentation and to keep her caught up on her documentation. On June 22, 2018, the employer issued a Documented Employee Consultation to Ms. Schaubhut regarding missing documentation. By July 6, Ms. Schaubhut was caught up on her documentation. However, Ms. Schaubhut then immediately began to fall behind again. On July 19 a supervisor spoke with Ms. Schaubhut regarding the need to be caught up by August 1 and to stay caught up. The supervisor then regularly corresponded with Ms. Schaubhut regarding her progress. Ms. Schaubhut was not caught up by August 1. At that time, Ms. Schaubhut had 25 notes that she had not completed and that were overdue. Forty of the progress notes that Ms. Schaubhut completed for the month of July were completed after 72 hours following the service encounter. On August 9, the employer placed Ms. Schaubhut on a performance improvement plan. Ms. Schaubhut successfully completed the August performance improvement plan by getting caught up and remaining caught up for a brief period. However, in October, Ms. Schaubhut once again fell behind. Beginning on October 9, the employer began to schedule office time during which Ms. Schaubhut could work on progress notes without distractions. Despite this arrangement, Ms. Schaubhut continued to be behind in documenting services. When Ms. Schaubhut was still not caught up by October 29, the employer prohibited Ms. Schaubhut from picking up shifts outside her usual work hours.

As of November 9, Ms. Schaubhut had 61 progress notes that were not completed and overdue. On November 13, 2018, the employer placed Ms. Schaubhut on a second performance improvement plan and warned her that failure to satisfactorily complete the steps outlined in the PIP could lead to termination of the employment. The employer continued to prohibit Ms. Schaubhut from picking up additional shifts. The employer continued to monitor Ms. Schaubhut's progress. As of the second week of December, Ms. Schaubhut had between 90 and 100 progress notes she had not completed and that were overdue. Some of the overdue progress notes were for services provided in October 2018. The employer assigned other DSPs to work Ms. Schaubhut's shifts so that Ms. Schaubhut could focus on getting caught up on documentation. When the issue continued unresolved, the employer prepared discharge documentation on December 14, 2018, but deferred action until December 18, 2018 to provide Ms. Schaubhut with further opportunity to resolve the issue. When she did not resolve the delinquent documentation issue, the employer discharged her from the employment.

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 871 IAC 24.32(4).

The evidence in the record establishes a pattern of neglect of essential duties that demonstrated a willful and wanton disregard of the employer's interests, as well as a willful and wanton disregard of the clients Ms. Schaubhut was supposed to be assisting. The evidence establishes that the employer provided Ms. Schaubhut with reasonable and appropriate time and pay to complete the documentation in a timely manner. The evidence establishes that the employer took increasingly extraordinary steps, parallel to progressive discipline, to assist Ms. Schaubhut in getting caught up and staying caught up. Ms. Schaubhut demonstrated the ability to get and stay caught up, but repeatedly elected over the course of months not to perform her documentation duties in a timely manner. Ms. Schaubhut's habitual neglect of essential duties constituted misconduct in connection with the employment. Accordingly, Ms. Schaubhut is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. Ms. Schaubhut must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

Because no benefits have been disbursed in connection with the claim, there is no overpayment issue to address.

DECISION:

The January 9, 2019, reference 03, decision is reversed. The claimant was discharged for misconduct in connection with the employment. The discharge date was December 18, 2018. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs