

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALISA K MUNZENMAIER
Claimant

APPEAL NO. 12A-UI-11252-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PLEASANT HILL 1 LLC
Employer

OC: 08/19/12
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 11, 2012, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on October 12, 2012. Claimant Alisa Munzenmaier participated. Shelly West represented the employer and presented additional testimony through Kelly Deaver and Teresa Hogenson. Exhibits 1 through 11 were received into evidence.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Alisa Munzenmaier was employed by The Shores at Pleasant Hill as a full-time care attendant from May 2011 until August 20, 2012, when Shelly West, director of health services, and Teresa Hogenson, Interim Administrator, discharged her from the employment. The incident that triggered the discharge occurred on August 16, 2012. On that day, Ms. Munzenmaier and other staff failed to adequately coordinate supervision of memory care residents in the dining room and one of the residents wandered out the front door of the facility and was located by other staff in the parking lot. At the time of the incident, Ms. Munzenmaier was trying to supervise multiple residents in different areas of the facility while she and others coordinated getting the residents back to their rooms after lunch. At one point, Ms. Munzenmaier enlisted a coworker to stay and supervise in the dining room while Ms. Munzenmaier returned another resident to the residence room. It was during this timeframe that the memory care resident wandered out the front door.

In making the decision to end Ms. Munzenmaier's employment, the employer considered prior incidents and reprimands. On July 11, 2012, Ms. Munzenmaier used offensive, profane language in front of a resident as Ms. Munzenmaier spoke to a coworker. On July 16, 2012, Ms. Munzenmaier again employed profanity when Administrative Assistant Kelly Deaver attempted to remind her of her need to complete safety training and a TB test.

In making the decision to discharge Ms. Munzenmaier, the employer considered additional incidents from 2011. In July 2011, Ms. Munzenmaier made a medication error by giving medication to a

patient who had already received their medication. Also in July 2011, Ms. Munzenmaier had a new employee go work in a secured area without appropriate training and experience. Ms. Munzenmaier was not a supervisor and should have let the new employee be. Also in July 2011, the employer reprimanded Ms. Munzenmaier for taking three smoking breaks during the course of an evening.

REASONING AND CONCLUSIONS OF LAW:

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 indicates that Ms. Munzenmaier and others were careless and failing to adequately coordinate supervision of cognitively impaired residents. At the time the memory care resident wandered out the dining room and out of the front door, Ms. Munzenmaier was transporting another resident to the residence room and had left someone else to supervise a dining room. Though Ms. Munzenmaier's part may have contributed to the failure to properly supervise residents, the weight of the evidence indicates that Ms. Munzenmaier was not primarily responsible for the resident absconding. It appears that a lack of adequate staff contributed significantly to the particular resident getting lost in the shuffle after lunch. Aside from the final incident that triggered the discharge, the only other incident involving carelessness or negligence is the medication error from July 2011. Thus, there is not a pattern of carelessness or negligence indicating a willful disregard of the employer's interests.

The two profanity incidents from July are completely unrelated to the final incident concerning the failure to properly supervise. The evidence does indicate that Ms. Munzenmaier twice use profanity in violation of the employer's work rules a little more than a month before her discharge from the employment.

Though the evidence establishes that Ms. Munzenmaier was a less-than-ideal employee, and though the decision to discharge her was within the discretion of the employer, the evidence fails to establish a pattern of carelessness and/or negligence indicating a willful disregard of the employer's interests. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Munzenmaier was discharged for no disqualifying reason. Accordingly, Ms. Munzenmaier is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Munzenmaier.

DECISION:

The Agency representative's September 11, 2012, 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw