

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTOINETTE M BROOKS
Claimant

APPEAL NO. 07A-UI-04489-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY MEDICAL CENTER
Employer

**OC: 04/15/07 R: 03
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Antoinette Brooks filed a timely appeal from the April 30, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held at 9:00 a.m. on May 17, 2007. Ms. Brooks participated. The employer responded to the hearing notice instructions and provided a telephone number for the hearing: Jerry Truemper and Jim Wolmack at 319-398-6151. However, at the scheduled start of the hearing, the employer's representative was not available at the number provided. As of the drafting of this decision at 10:30 a.m. on May 17, the employer has not responded to the voice mail messages the administrative law judge left for the employer at the scheduled start of the hearing.

ISSUE:

Whether the claimant was discharged 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: Antoinette Brooks was employed by Mercy Medical Center as a full-time housekeeper from May 2, 2002 until March 31, 2007, when Jim Wolmack, Supervisor of Environmental Services, discharged Ms. Brooks based on an allegation that Ms. Brooks had intimidated a new employee on March 31. However, Ms. Brooks had merely asked the new employee to be considerate of others by not leaving her utility cart and other items in the middle of the hallway or aisle. The new employee complained to a lead person, who complained to Mr. Wolmack. Mr. Wolmack summoned Ms. Brooks to a meeting to discuss the complaint. Shortly after the meeting ended, Mr. Wolmack presented Ms. Brooks with a written reprimand and suspension notice. Ms. Brooks refused to sign the reprimand, because she did not agree with the characterization of her conduct set forth in the reprimand. When Ms. Brooks refused to sign the reprimand, Mr. Wolmack told her she was discharged from the employment.

Ms. Brooks has an eighth or ninth-grade education. Ms. Brooks' testimony and participation at the hearing revealed that Ms. Brooks has some comprehension limitations, which more than likely impacted on her employment generally and her refusal to sign the reprimand.

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).

Because the employer did not make itself available for the hearing, the evidence in the record is limited to the testimony of Ms. Brooks. The evidence in the record fails to establish, by a preponderance of the evidence, misconduct on the part of Ms. Brooks. Though the employer had the burden of proving misconduct, the employer has failed to present any evidence whatsoever to support or corroborate an allegation of misconduct. Accordingly, misconduct cannot be established. See 871 IAC 24.32(4). The evidence in the record suggests that Ms. Brooks' refusal to sign the reprimand arose from a good-faith error in judgment, rather than from willful or wanton disregard of the interests of the employer. The evidence does not establish any misconduct on the part of Ms. Brooks with regard to her interaction with the new employee. The evidence fails to establish any negligence or carelessness on the part of Ms. Brooks.

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

DECISION:

The claims representative's April 30, 2007, reference 01, decision is reversed. 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