

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SARAH A HEIM
Claimant

ABCM CORPORATION
Employer

APPEAL NO. 24A-UI-01980-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/21/24
Claimant: Appellant (2)**

Iowa Code Section 96.5(2)(a) & (d) – Discharge

STATEMENT OF THE CASE:

On February 19, 2024, Sarah Heim (claimant) filed a timely appeal from the February 16, 2024 (reference 01) decision that disqualified her for benefits and that relieved the employer's account of charges for benefits, based on the deputy's determination that the claimant was discharged on January 24, 2024 for insubordination. After due notice was issued, a hearing was held on March 8, 2024. Claimant participated. Amy Wright represented the employer and presented additional testimony through Tracy Haack. Claimant Exhibit 1 and Employer Exhibits I through L, pre-labeled by the employer, were received into evidence. There were no Exhibits A through H submitted for the appeal hearing.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Sarah Heim (claimant) was employed by ABCM Corporation as the full-time Human Resources Coordinator at Rolling Green Village, a long-term care facility in Nevada, Iowa from November 30, 2023 until January 24, 2024, when the employer discharged her from the employment. Robin Meyers, Administrator, hired Ms. Heim. Ms. Heim had applied for a social work. Ms. Meyers noted that Ms. Heim had a business degree in human resources and persuaded Ms. Heim to accept the Human Resources Coordinator position instead. Ms. Heim completed her business degree in 2022 through online studies and had not worked in a human resources job prior to accepting the position at Rolling Green Village. Within weeks of hiring Ms. Heim, Ms. Meyers separated from her employment with ABCM in December 2023. Thereafter, Amy Wright, Quality Assurance Nurse Consultant, became the acting Administrator at Rolling Green Village.

On January 11, 2024, Ms. Wright spoke to Ms. Heim and the Director of Nursing regarding her planned enforcement of the employer's attendance policy and her expectation that enforcement of the attendance policy would likely lead to two certified nursing assistants separating from

their employment at Rolling Green Village. Ms. Wright directed Ms. Heim to review recent applications, to reach out to some of the recent applicants, and to set up interviews. Ms. Heim agreed to do as instructed.

On January 12, 2024, Ms. Wright again communicated with Ms. Heim. Ms. Wright was at that time preparing to commence a period of vacation. Ms. Heim had by that time contacted at least one recent applicant and communicated this to Ms. Wright.

On January 13, 2024, Ms. Wright met with Ms. Heim to address what she perceived to be issues with Ms. Heim's job performance. Ms. Wright faulted Ms. Heim for expressing concern about the number of paper forms the employer used for various human resources functions. Ms. Wright perceived that Ms. Heim was questioning some of the employer's processes. Ms. Wright expressed concern that Ms. Heim might try to change some of the established processes and told Ms. Heim that would not be tolerated. Ms. Heim expressed concern that her work was being scrutinized by three trainers who each provided instruction inconsistent with the others. Ms. Heim raised concern about the amount of money being deducted from her paycheck for company-sponsored insurance, nearly half of her monthly pay. Ms. Heim requested to withdraw from the employer's insurance coverage due to the unexpected cost. Ms. Wright communicated it was likely not possible to withdraw from the coverage and asked whether that was a deal-breaker for Ms. Heim. Ms. Heim stated she was unsure. Ms. Heim mentioned that she had applied for the social work position. Ms. Heim had earlier expressed interest in applying for the Administrator position but told Ms. Wright she had concluded she would not be good fit for the Administrator position. Ms. Wright told Ms. Heim that the employer did not want to waste any more money training Ms. Heim if she was unsure about remaining in the human resources coordinator position.

Ms. Wright returned to work on or about January 22, 2024. At that time, Ms. Wright reviewed information on the employer's application tracking system but did not observe status notes indicating that Ms. Heim had contacted applicants during Ms. Wright's absence. The tracking system information did not accurately for fully reflect Ms. Heim's efforts to comply with Ms. Wright's directive. Ms. Heim had indeed contacted recent applicants. Ms. Wright erroneously concluded Ms. Heim had made no effort to contact applicants during her absence and erroneously concluded that Ms. Heim had willfully failed to comply with her directive. Ms. Wright sent an email message to Ms. Heim asking, "Sarah- did you reach out to all of those CNA applicants we have in ATS while I was off? I don't see any notes on their applications." Ms. Heim promptly and truthfully responded, "I sent messages to about 5 of them and we have one interview lined up." After receiving the message from Ms. Wright, Ms. Heim took additional steps to contact recent applicants.

A couple hours later, Ms. Wright reviewed the employer's application tracking system and then sent a follow up message to Ms. Heim:

I see the messages were just sent out this morning. If we do not have responses by tomorrow, please try calling them. We often get a slower response to emails but phone calls tend to be a bit more effective.

For tomorrow please call each applicant that does not respond today to get interviews arranged.

Ms. Heim promptly and truthfully replied:

I sent those out this morning. I have gone through the candidate list last Thursday I believe and got one call back from Danielle I believe and tried to call Brooklyn as well and a few others that are in my application saved pile that have already went through the phone interview process.

On January 24, 2024, Ms. Wright proceeded with discharging Ms. Heim from the employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)(a) and (d) provides as follows:

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.

...

d. For the purposes of this subsection, "misconduct" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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. Misconduct by an individual includes but is not limited to all of the following:

(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

See also Iowa Admin. Code r. 871-24.32(1)(a) (repeating the text 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 Iowa Administrative Code rule 87124.32(4).

Continued failure to follow reasonable instructions constitutes misconduct. See *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform

a specific task may not constitute misconduct if such failure is in good faith or for good cause. See *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985).

The evidence in the record establishes a January 24, 2024 discharge for no disqualifying reason. The employer was quick to conclude, and erroneously concluded, that the claimant had intentionally defied the employer's directive to contact recent applicants. The claimant had in good faith contacted recent applicants in response to the employer's initial directive. The claimant promptly took additional good-faith steps to contact recent applicants in response to the employer's subsequent directive. The record does not establish a refusal to comply with an employer directive. The evidence does not establish insubordinate conduct or any other intentional and substantial disregard of the employer's interests. The claimant's concerns with the conditions of the employment did not constitute misconduct in connection with the employment. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The February 16, 2024 (reference 01) decision is REVERSED. The claimant was discharged on January 24, 2024 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.



James E. Timberland
Administrative Law Judge

March 18, 2024
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.