

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTINE M STEWART
Claimant

APPEAL NO. 17A-UI-09439-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GREAT RIVER MEDICAL CENTER
Employer

OC: 08/20/17
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Christine Stewart filed a timely appeal from the September 11, 2017, reference 01, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on the claims deputy's conclusion that Ms. Stewart was discharged on August 23, 2017 for failure to perform satisfactory work despite being capable of performing satisfactory work. After due notice was issued, a hearing was held on October 2, 2017. Ms. Stewart participated. Michele Neally represented the employer and presented additional testimony through Kevin Dameron. Exhibits 1 and 2 were received into evidence.

ISSUE:

Whether Ms. Stewart 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: Christine Stewart was employed by Great River Medical Center (GRMC) as a full-time Environmental Services Housekeeper from June 6, 2017 until August 24, 2017, when Michele Neally, Human Resources Generalist, discharged her from the employment. Rick Shamp, Second Shift Environmental Services Supervisor, was Ms. Stewart's immediate supervisor. Mr. Shamp reports to Kevin Dameron, Manager for Environmental Services.

The employer's decision to discharge Ms. Stewart was based solely on Ms. Stewart's chronic medical condition, Raynaud's disease, and its impact on Ms. Stewart's ability to perform a relatively small portion of her work duties. Ms. Stewart was diagnosed with Raynaud's disease about three years ago. Raynaud's disease causes the sufferer's fingers to feel numb and cold in response to cold temperatures or stress by limiting blood circulation to the affected areas. Extreme or prolonged symptom flare-ups can result in tissue damage in the affected areas. Other factors that may exacerbate Raynaud's symptoms include caffeine consumption and tobacco smoking. Ms. Stewart is a non-smoker, drinks decaffeinated coffee and otherwise limits her caffeine consumption. When Ms. Stewart applied for, interviewed for, and accepted employment as a housekeeper at GRMC she had no reason to believe that the employment

would adversely affect her chronic medical condition or that her condition would impact her ability to perform the duties of the employment.

Ms. Stewart participated in orientation and training until June 25, 2017. During orientation, Ms. Stewart learned that she could be assigned to work in all areas of the employer facility as needed. The employer's facility includes a hospital, medical clinics and doctors' offices. While Ms. Stewart was in training, her immediate supervisor, Rick Shamp, Second Shift Supervisor for Environmental Services, told Ms. Stewart that her work hours would be 2:00 p.m. to 10:30 p.m. once she was done with training that her work schedule would include weekend work and various additional workdays between Monday through Friday. Ms. Stewart was okay with these conditions of the employment.

Effective July 11, 2017, Ms. Stewart's assigned work hours were 4:00 p.m. to 12:30 a.m. and she was assigned primarily to clean offices. Mr. Shamp told Ms. Stewart that once the desired number of new housekeepers had been hired and trained, he planned to assign Ms. Stewart to the business area and the hyperbaric area of the facility during her Monday through Friday shifts and to clean doctors' offices and the dialysis area on the weekend. Until then, Ms. Shamp's weekend shifts would include cleaning in the hospital. Under the employer's Environmental Services protocol, Ms. Stewart, like other housekeepers, would be expected to "float" to other areas of the facility as needed.

As Ms. Stewart moved forward in the employment, she discerned that the colder environment in the hospital sometimes triggered her Raynaud's symptoms. Though the employer indicates that its entire facility, with the exception of patient rooms, is maintained at the same 73 degree temperature, Ms. Stewart discerned that the hospital hallways were in fact colder than other areas of the employer's facility and that this colder environment triggered her Raynaud's symptoms.

On August 8, 2017, Ms. Stewart met with her primary care provider, Breanne Vogel, A.R.N.P., for a regular follow up appointment. During the appointment, Nurse Practitioner Vogel and Ms. Stewart discussed a change in the condition of Ms. Stewart's hands. Ms. Stewart told Nurse Practitioner Vogel that her hands sometimes got cold when she was worked in the hospital area of GRMC. Nurse Practitioner Vogel told Ms. Stewart it might be best not to work in the hospital area of GRMC. Nurse Practitioner Vogel provided Ms. Stewart with a medical note asked the employer not to have Ms. Stewart work on the hospital side of GRMC due to cold temperature and Ms. Stewart's Raynaud's disease. Nurse Practitioner Vogel recommended that Ms. Stewart discuss her work conditions at her upcoming appointment with Dr. Dany Saad, M.D., of Great River Orthopedics Specialists. Ms. Stewart took the note to work with the intention of delivering it to Mr. Shamp, but Mr. Shamp was on vacation at the time. Ms. Stewart delivered the note to Mr. Shamp when he returned from vacation. Mr. Shamp told Ms. Stewart that she would need to speak with Carolyn Stiefel, Health Coordinator. Ms. Stiefel is a nurse. Mr. Shamp shared the medical note from Nurse Practitioner Vogel with Mr. Dameron. Mr. Dameron forwarded the note to the GRMC human resources office because the note concerned a work conditions issues, rather than a disciplinary matter.

On August 16, Ms. Stewart met with Ms. Stiefel and at that time expressed concern that working on the hospital side of GRMC was triggering her Raynaud's symptoms. Ms. Stewart expressed concern about her fingers and said she did not know what to do. Ms. Stiefel indicated that she would meet with Mr. Shamp and Mr. Dameron to discuss the matter and that they and Ms. Stewart would meet to discuss the matter. Ms. Stiefel set a meeting for 10:00 a.m. on August 17, but notified Ms. Stewart on the morning of August 17 that the meeting was

cancelled. Ms. Stiefel told Ms. Stewart that she would instead need to meet with Ms. Stiefel and Human Resources Generalist Michele Neally that afternoon.

When Ms. Stewart met with Ms. Stiefel and Ms. Neally, Ms. Neally and Ms. Stiefel decided that rather than removing Ms. Stewart from working in the hospital as requested in Nurse Practitioner Vogel's note, they would instead have Ms. Stewart purchase runner's gloves to wear underneath the required latex gloves and would reimburse Ms. Stewart for the cost of the gloves. Ms. Stewart purchased the gloves that day.

On April 18, 2017, Ms. Stewart met with Dr. Saad for her annual follow-up appointment. Ms. Stewart discussed with Dr. Saad her concern that her work on the hospital side of GRMC was triggering her Raynaud's disease. Dr. Saad provided Ms. Stewart with a medical note that indicated the employer should allow Ms. Stewart to avoid working on the hospital side of GRMC due to the cold temperature's impact on her Raynaud's disease. Dr. Saad attached detailed information concerning Raynaud's disease for the employer's consideration.

On Saturday, August 19 and Sunday, August 20, Ms. Stewart wore the runner's gloves under her latex gloves when working in the hospital. Ms. Stewart was able to perform her work duties on August 19 without difficulty and attributes this to being extremely busy and active at work that day. On August 20, Ms. Stewart's work day was less demanding and Ms. Stewart experienced Raynaud's symptoms when working in the hospital despite the runner's gloves. Ms. Stewart thereafter performed her cleaning duties in the hyperbaric area on August 21, 22 and 23. The hyperbaric area was intensely warm due to the machinery located and used in that area. Ms. Stewart provided the employer with the note from Dr. Saad.

On August 25, 2017, Ms. Neally called Ms. Stewart and asked how the gloves were working. Ms. Stewart indicated that the gloves provided some help, but was unable to quantify the degree of help to the employer's satisfaction. Ms. Stewart had only worn the extra gloves when working in the hospital on August 19 and 20. Ms. Neally told Ms. Stewart that if Ms. Stewart was unable to work on the hospital side of the workplace, the employer would have to end her employment. Ms. Neally told Ms. Stewart that she would need to get a note from her doctor indicating that the runner's gloves worked 100 percent of the time as an accommodation for Ms. Stewart's Raynaud's disease. Ms. Stewart asked whether Ms. Neally expected her to lie to her doctor and say the gloves were working so that she could keep her job. Ms. Stewart indicated that she was a single mother, needed the employment and was not quitting. Ms. Neally told Ms. Stewart that she was discharged from the employment.

Ms. Stewart established a claim for benefits that was deemed effective August 20, 2017, the Sunday that started the week during which Ms. Stewart applied for benefits. Ms. Stewart's base period for purposes of the claim consists of the second, third and fourth quarters of 2016 and the first quarter of 2017. Great River Medical Center is not one of Ms. Stewart's base period employers.

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). 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 evidence in the record establishes a discharge that was based on a medical condition, rather than misconduct in connection with the employment. The weight of the evidence establishes that medical condition had modest impact on Ms. Stewart's ability to perform her

work duties and on the employer. The evidence in the record establishes that the employer elected to substitute its judgment regarding Ms. Stewart's medical condition for the expertise of two medical professionals. The evidence establishes that the employer elected to discharge Ms. Stewart from the employment in lieu of reasonably accommodating Ms. Stewart's medical condition. The employer had an obligation to provide Ms. Stewart with reasonable accommodations that would allow her to continue in the work. See *Sierra v. Employment Appeal Board*, 508 N.W. 2d 719 (Iowa 1993). The weight of the evidence establishes that the employer could have provided reasonable accommodation without undue hardship. The employer elected instead to sever the employment of this new employee, rather than continue the discussion.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Stewart was discharged for no disqualifying reason. Accordingly, Ms. Stewart is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits. However, because Great River is not one of Ms. Stewart's base period employers for purposes of the claim year that began for Ms. Stewart on August 20, 2017, Great River will not be charged for benefits paid to Ms. Stewart in connection with the current benefit year that will expire on August 18, 2018. Great River's account may be assessed for benefits paid to Ms. Stewart in connection with a new claim year established on or after August 19, 2018, provided Ms. Stewart is at that point deemed eligible for benefits and provided the employer is at that time deemed a base period employer.

DECISION:

The September 11, 2017, reference 01, decision is reversed. The claimant was discharged on August 25, 2017 for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged as outlined above.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs