

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**MELISSA L RHEA**  
Claimant

**ALCOHOL AND DRUG DEPENDENCY  
SERVICES**  
Employer

**APPEAL NO. 20A-UI-11947-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/16/20**  
**Claimant: Respondent (1)**

Iowa Code section 96.5(2)(a) – Discharge

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the September 17, 2020, reference 03, decision that allowed benefits to the claimant provided she met all other eligibility requirements and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on April 7, 2020 for no disqualifying reason. After due notice was issued, a hearing was commenced on November 20, 2020 and completed on November 23, 2020. On November 20, 2020, the employer representative, Anna Marie Gonzales of Sedgwick Unemployment required a late start, but then was available and participated, as did employer witness Nicolas Foss. Mr. Foss provided testimony. The claimant, Melissa Rhea, appeared for the hearing about an hour after the scheduled start of the hearing and then asserted she had not received the employer's exhibits. The November 20, 2020 hearing was adjourned with an agreement to reconvene on November 23, 2020. The administrative law judge provided both parties a copy of the recorded November 20, 2020 proceeding for their review and use in connection with the reconvened hearing. On November 23, 2020, Ms. Gonzales represented the employer and presented testimony through Mr. Foss. Ms. Rhea participated and provided testimony. Exhibits 1 through 5 were received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits paid to the claimant (DBRO and KPYX). The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

**ISSUES:**

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: The claimant, Melissa Rhea, was employed as a full-time Residential Counselor from January 13, 2020 until April 8, 2020, when the employer discharged her from the employment. The claimant

last performed work for the employer on March 30, 2020. The claimant's work duties included providing substance use treatment services to up to 10 clients and facilitating about four hours of daily group counseling. The claimant also provided one-on-one counseling. The claimant was responsible for completing daily documentation of the services she provided. The claimant was also responsible for communicating with appropriate professionals regarding clients' completion of required treatment. The claimant's salary was \$32,000.00 per annum, for which the claimant usually worked more than 40 hours were week. Nicolas Foss, Associate Director of Treatment Services, was the claimant's supervisor.

The final conduct that triggered the discharge concerned the claimant's timekeeping record for March 16-31, 2020. Mr. Foss spoke with Ms. Rhea on March 27, 2020 and March 30, 2020 regarding the need to document training through Relias and the need to perform catch-up work through NextStep. The timesheet Ms. Rhea submitted included documentation work on March 22, 29, 30 and 31 that was not reflected in the Relias system. The NextStep record reflected three hours and 21 minutes of total work through that system over the course of March 26, 28 and 29, 2020. The employer has not provides the claimant's time report and cannot recall the particulars of the time report. Mr. Foss reviewed the time report at some point between March 31 and April 3, 2020, highlighted the perceived apparent discrepancies and emailed the material back to the claimant with a request that the claimant "make sense of what was going on." The claimant advised that she must have made errors in preparing the timesheet. The employer concluded that the claimant had not provided a satisfactory response. The claimant was on a medical leave of absence at the time Mr. Foss contacted her with a concern about her time report and at the time of discharge. The claimant has a history of respiratory failure and was off work due to her doctor's concern about spiking COVID-19 cases. The time report the employer was concerned about was for an unusual work week during which the claimant worked less than the full week and had used sick leave and vacation time. The clamant does not have access to and cannot recall the particulars of the time report.

In making the decision to discharge the claimant from the employment, the employer also considered late completion of documentation of services. The employer believed the claimant had mastered all aspects of the duties in her roughly two and a half months on the job. The claimant, on the other hand, felt overwhelmed by the constellation of duties and the frequent distractions, especially she was supposed to be performing documentation duties and clients would stop by.

## **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 an April 8, 2020 discharge for no disqualifying reason. The employer presented evidence of concerns, but presented insufficient evidence to prove the employer's assertion that the claimant falsified her time report for the period of March 16, 2020 through March 31, 2020. The employer could have provided a copy of the time report and other records the employer considered, but the employer did not do that. The parties have very different perspectives on the challenges inherent in the claimant's job. The employer asserts mastery, dereliction and dishonesty, all in the course of a two and a half month employment. The claimant asserts that she was overwhelmed, dealt with frequent distractions, and made mistakes, something a reasonable person might expect to occur in a new employment in the particular context, even without factoring the health concern. The employer presented insufficient evidence to prove that the claimant demonstrated a willful and wanton disregard of the employer's interests. The claimant is eligible for benefits, provided she meets all other eligibility requirements. The employer's account may be charged.

**DECISION:**

The September 17, 2020, reference 03, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

A rectangular box containing a handwritten signature in cursive script that reads "James E. Timberland".

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James E. Timberland  
Administrative Law Judge

January 20, 2021  
Decision Dated and Mailed

jet/mh