

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DANA L ERICKSON**  
Claimant

**APPEAL NO. 14A-UI-11313-JT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MERCY CLINICS INC**  
Employer

**OC: 09/28/14**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the October 22, 2014, reference 01, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that she had been discharged for failure to follow instructions in the performance of her job. After due notice was issued, an in-person hearing was held in Des Moines on January 28, 2015. Claimant participated. Patti Steelman represented the employer and presented testimony through Jonna Treadway. Exhibits One through 12 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: The claimant was employed as a full-time neurology assistant/certified medical assistant from 2012 until October 1, 2014, when the employer discharged her from the employment for failure to complete mandatory computer-based training modules. The employer pays employees their regular wage while they are working on the training modules. The employer makes computers available in the workplace for completion of the training. When the primary work duties permit, the employer will provide the employee with time during the employee's regular shift to complete the training modules. Employees may also complete the training outside their regular work hours and be paid for that time. Employees with Internet access can work on the training from home or some other location.

The final incident that triggered the discharge concerned the claimant's failure to complete the computer-based training modules by a September 30, 2014 deadline. The training modules had been assigned to the claimant on July 27, 2014. The employer provided reminders to the claimant about the need to complete the training modules. It would take about an hour to complete the required training. Between July and the end of September, the claimant had to take on additional duties due to the absence of a coworker. The claimant called in an absence

due to illness on September 29, 2014, but then went to a two-hour continuing education social event that evening. The claimant then called in an absence due to illness on September 30, 2014. The claimant had taken no steps to start either training module.

In making the decision to discharge the claimant, the employer considered two prior similar incidents. Under the employer's policy the third failure to complete required training by the stated deadline would result in discharge from the employment. The next most recent incident that factored in the discharge concerned the claimant's failure to complete a basic life support training module by a June 30, 2014 deadline. The training module had been assigned to the claimant months earlier. The claimant knew that the training was in two parts, a computer-based training section, and a skills demonstration section. The claimant waited until June 30, 2014 to complete the computer training skills portion. The claimant had to complete that portion before she could participate in the skills demonstration portion. By waiting until the last day to complete the computer-based training, the claimant found herself in a situation where there were no skills demonstration show left for her on June 30, 2014. The employer issued a reprimand to the claimant based on her failure to complete the training by the deadline. The claimant completed the skills demonstration portion within a couple days following the deadline. The claimant had also failed to take any steps to complete another training module that was due on March 31, 2014. The training module has been assigned to the claimant in late 2013 and took 30-45 minutes to complete. The employer issued a reprimand to the claimant in connection with her failure to complete the required training.

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 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.

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).

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 misconduct in connection with the employment based on the claimant's repeated failure to complete mandatory training by the deadline. The claimant's participation in the two-hour continuing education social event on the evening of September 29, 2014 is sufficient to establish the claimant's ability to complete the one-hour training that was due September 30, 2014. Despite the increased work load, the weight of the evidence indicates that the claimant had time and opportunity prior to September 29, 2014, to at least start, if not finish, the one-hour training module, if she had been inclined to do so. She was not so inclined, despite being aware of the consequences of failure to complete the training by the deadline. The two prior incidents were remarkably similar in nature. In one instance, the claimant took no steps to complete 30-45 minutes of training that she had known about for months. In the other instance, the claimant waited until the very last day to complete computer training that she had to complete before she could sign up for the skills demonstration portion of the training. The claimant's repeated failure to complete the training she knew she had to complete to continue in

the employment demonstrates a pattern of negligence indicating a willful disregard of the employer's interests, as well as insubordination. The employer's expectation that the claimant would complete the required training by the deadline was reasonable. The claimant's failure to complete the training was unreasonable.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that the claimant was discharged for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until she has worked in and paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements. The employer's account will not be charged.

**DECISION:**

The October 22, 2014, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs