

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

DANIELLE SCHRADER
Claimant

APPEAL NO. 23A-UI-04866-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**TRUSTEES OF THE GRAND CHARITY
FUND**
Employer

**OC: 04/16/23
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

On May 10, 2023, Danielle Schrader (claimant) filed a timely appeal from the May 4, 2023 (reference 01) decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant was discharged on April 21, 2023 for misconduct in connection with the employment. After due notice was issued, a hearing was held on May 30, 2023. Claimant participated. Tami Tegeler represented the employer.

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:

Danielle Schrader (claimant) was employed by Trustees of the Grand Charity Fund as a full-time Certified Nursing Assistant (CNA) at a skilled nursing facility in Bettendorf. The employment began in May 2022 and ended on April 21, 2023, when Tami Tegeler, Administrator, discharged the claimant from the employment. The claimant's duties involved assisting elderly, dependent adults with activities of daily living. The population the claimant served included residents with dementia. The claimant's work hours were 6:00 a.m. to 2:00 or 2:30 p.m. Pam Schroeder, Director of Nursing, was the claimant's supervisor.

The sole incident that factored in the discharge occurred on April 19, 2023 and concerned the claimant's interaction with an elderly resident who suffers from dementia. The resident was in a lounge area. The resident grabbed a very lightweight bag off a table. The bag contained a small amount of ramen noodles. The bag did not belong to the resident. The resident started rummaging through the bag. The claimant took the bag from the resident. The resident attempted to hit the claimant. The resident again grabbed the bag. The claimant again took the bag from the resident and walked away with the bag. The employer alleges the claimant hit the

resident with the bag before she walked away. The claimant denies she hit the resident with the bag. A nurse, Kirsten Carpenter, R.N., reported the incident to Tami Tegeler, Administrator. Ms. Tegeler conferred with Deanna Axtell, Human Resources Director. At the end of the claimant's shift, Ms. Axtell notified the claimant she was suspended from the employment pending investigation of the matter. Prior to departing from the workplace, the claimant provided a cursory written statement. The employer collected written statements from other staff in the vicinity at the time of the claimant's interaction with the resident. Aside from the claimant, all of said employees continue with the employer. Ms. Tegeler reviewed video surveillance record. The employer retained the video surveillance record. On April 21, 2023, Ms. Axtell notified the claimant she was discharged from the employment because it "looked like" the claimant had hit the resident with the bag. The claimant requested to review the video surveillance record, but the employer did not allow the claimant to review the video surveillance record.

The claimant was well aware at all relevant times of the relevant law and employer policy defining and prohibiting dependent adult abuse, but credibly insists she did not engage in such conduct. The claimant earned her CNA certification prior to beginning the employment with this employer and has worked as a CNA for more than a decade. As part of the CNA training, the claimant participated in dependent adult abuse mandatory reporter training. The employer provided the claimant an employee handbook at the start of the employment. The handbook included a policy prohibiting dependent adult abuse and subjecting employees to discharge from the employment if the employer found the employee to have engaged in such conduct. The claimant agrees that if she had in fact hit the resident with the bag that would have been a reportable incident of dependent adult abuse.

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.

...

(6) Conduct that substantially and unjustifiably endangers the personal safety of coworkers or the general public.

...

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. For the purposes of this rule, "misconduct" is defined as 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 a 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.

...

(6) Conduct that substantially and unjustifiably endangers the personal safety of coworkers or the general public.

...

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 871-24.32(4).

The weight of the evidence in the record establishes a discharge for no disqualifying reason. The employer presented insufficient evidence, and insufficiently direct and satisfactory evidence, to rebut the claimant's testimony. The employer's decision to discharge the claimant from the employment was based in large part on the video surveillance. Though the employer had the burden of proving misconduct, the employer elected not to submit the video surveillance as evidence for the appeal hearing. Though the employer had the burden of proving

misconduct, the employer elected not to present testimony from any of the staff who were present for all or part of the claimant's April 19, 2023 interaction with the resident. The weight of the evidence in the record establishes the claimant did not knowingly or intentionally make contact with the resident after retrieving the bag from the resident and did not knowingly or intentionally violate the employer's policy. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The May 4, 2023 (reference 01) decision is REVERSED. The claimant was discharged on April 21, 2023 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

May 31, 2023
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
4th Floor – Lucas Building
Des Moines, Iowa 50319
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
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: 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.