

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL T POWERS**  
Claimant

**APPEAL NO. 11A-UI-12256-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MANNING REGIONAL HEALTHCARE  
CENTER**  
Employer

**OC: 08/07/11**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Michael Powers filed a timely appeal from the September 6, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on October 11, 2011. Mr. Powers participated. Shannon Mahannah, Director of Manning Family Recovery Center, represented the employer and presented additional testimony through Shelly Lorenzen, Director of Human Resources. Exhibits One through Seven 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: Michael Powers was employed by Manning Family Recovery Center on a full-time basis from 1995 until July 28, 2011, when Shannon Mahannah, Director of Manning Family Recovery Center; Shelly Lorenzen, Director of Human Resources; and Amy Dawson, Chief Clinician, discharged him from the employment. Mr. Powers had started the employment as a counselor and had been promoted to Clinical Coordinator in 2002. From November 2006 until February 17, 2011, Mr. Powers had been Director of Manning Family Recovery Center. In February 2011, Angela Johnson, C.E.O., summoned Mr. Powers to a meeting, told him he lacked the requisite administrative skills to continue as Director, and demoted him to Clinical Coordinator. Mr. Powers continued to perform the Director duties until Ms. Mahannah started with the employer as the new Director on June 3, 2011. While Mr. Powers had been Director, he had reported to C.E.O. Johnson. Once he was demoted, Mr. Powers reported to Chief Clinician Dawson. Once Ms. Mahannah started as Director, she became Mr. Powers' immediate supervisor.

The final incident that the employer points to as the trigger for the discharge was Mr. Powers stated refusal on July 27, 2011 to incorporate a client's adult son into the client's substance abuse treatment services. Mr. Powers had prior contact with the son and deemed him too

angry to be involved in the client's therapy. Mr. Powers expressed the refusal to Ms. Mahannah. Mr. Powers had not previously refused a directive. Mr. Powers was about to leave for a scheduled vacation. Mr. Powers would bear the responsibility of scheduling any appointment for the client that might involve the client's son. At the time Mr. Powers stated his refusal to involve the son, he anticipated, based on prior experience, that there would be an opportunity for further discussion of the matter.

In making the decision to end Mr. Powers' employment, the employer also points to an alleged code of conduct infraction on July 21, 2011. On that day, Mr. Powers arrived for work in a sour mood and stated privately to Ms. Mahannah that he was "fucking sick and tired of dealing with people." The comment was an expression of frustration and was in reference to matters *outside* work. The comment was not in reference to clients, staff or matters at work. Mr. Powers and Ms. Mahannah both used profanity in private conversations and Ms. Mahannah did not say anything at the time to indicate she found the statement inappropriate or offensive. Ms. Mahannah did take the opportunity to tell Mr. Powers that he might be in the wrong field if he felt that way.

The next most recent matter the employer cites as factoring into the discharge dates from July 2009.

Once Mr. Powers was removed from the Director position, the employer found it difficult to justify, for budgetary and staffing reasons, his continued presence in the workplace. Once Ms. Mahannah started as Director, she wanted and expected Mr. Powers to justify his continued employment by "taking ownership" of counseling services and coming up with "a plan" to do so. Ms. Mahannah was disappointed when Mr. Powers mentioned that he had written some ideas on a piece of scratch paper. While the initial deadline for the plan was August 2011, Ms. Mahannah had extended the deadline to October 2011.

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

Iowa Code section 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.

871 IAC 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.

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 fails to establish a discharge for misconduct in connection with the employment. The evidence indicates instead that the refusal on July 27, 2011 merely served as a pretext for ending the employment, when the employer had been moving in that direction since February 2011. The weight of the evidence indicates that the Chief Executive Officer decided to remove Mr. Powers as Director, but found it expedient to continue him in the employment with related duties while the employer conducted a search for a new, more suitable Director. Once the employer had a new Director in Ms. Mahannah at the beginning of June 2011, Mr. Powers' days with the employer were numbered. The employer could no longer justify keeping him on in light of reduction in his duties and the relatively small number of clients he serviced. Mr. Powers' isolated refusal on July 27 to incorporate the client's son into treatment was based on his belief that doing so would not be productive. In other words, while the employer had a good reason for issuing the directive, Mr. Powers had a reasonable basis

for declining, at least initially, to follow that directive. The refusal was in word only, as the scheduling and other groundwork for incorporating the client's son would only come later, presumably after Mr. Powers returned from his vacation. The interaction did not amount to insubordination for unemployment insurance purposes. Nor did the use of profanity on July 21, give the context and the custom, amount to misconduct. The weight of the evidence indicates that the employer found it expedient to end Mr. Powers' employment at the time he was scheduled to start his vacation and merely looked to what was expedient and available to support the separation. Though Mr. Powers did not perform to the employer's satisfaction, the evidence fails to establish any intent on the part of Mr. Powers to act contrary to the interests of the employer and the performance issues did not constitute misconduct for unemployment insurance purposes.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Powers was discharged for no disqualifying reason. Accordingly, Mr. Powers is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Powers.

**DECISION:**

The Agency representative's September 6, 2011, reference 01, decision is reversed. 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.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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