

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**PHYLLIS Y DUNSON**  
Claimant

**COUNTRY MEADOWS PLACE LLC**  
Employer

**APPEAL NO. 24A-UI-03511-JT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/10/24  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

On April 3, 2024, Phyllis Dunson (claimant) filed a timely appeal from the March 29, 2024 (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 March 11, 2024 for fighting on the job. Ms. Dunson requested an in-person hearing. After due notice was issued, a hearing was held at the Mason City IowaWORKS Center on April 18, 2024. Ms. Dunson participated. John Joyner represented the employer. Exhibits 1 through 4 and A were received into evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Phyllis Dunson (claimant) was employed by Country Meadows Place, L.L.C. as a full-time Resident Assistant from May 2023 until March 11, 2024, when the employer discharged her from the employment. Ms. Dunson worked a 10:00 a.m. to 10:00 p.m. shift. Ms. Dunson’s former boyfriend, Robert McCoy, also worked for the employer as a Resident Assistant on the overnight shift that began at 10:00 p.m. Toward the end of Ms. Dunson’s shift on March 9, 2024, Ms. Dunson became violently jealous when she observed Mr. McCoy arrive for work with his new girlfriend. Ms. Dunson repeatedly assaulted Mr. McCoy. The assaults took place in three areas of the workplace. A surveillance camera in the employee break room recorded the repeated assaults that took place in the break room. The surveillance record shows Ms. Dunson repeatedly and forcefully shoving Mr. McCoy as Mr. McCoy attempts to avoid being further assaulted until he can remove himself from the break room. None of Ms. Dunson’s violent behavior was self-defensive in nature.

Ms. Dunson’s assaultive behavior violated the employer’s policy that prohibited “Threatening, provoking, engaging in physical violence, fighting with, or harassment of...any fellow employee, vendor, or customer.” The policy was set forth in the handbook the employer made available to

Ms. Dunson and had Ms. Dunson acknowledge at the start of the employment. Ms. Dunson was at all relevant times aware of the policy.

The employer investigated the March 9 interactions and collected written statements from Mr. McCoy and two other employees who were in the break room at the time of the assaults that occurred in that room. The employer did not collect a written statement from Ms. Dunson. John Joyner, Director, was away from the workplace at the time of the violent behavior but reviewed the investigation notes, the written statements, and the surveillance video prior to discharging Ms. Dunson from the employment on March 11, 2024. The violent conduct on March 9, 2024 was the sole basis for the discharge.

## 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.

...

See also Iowa Admin. Code r. 871-24.32(1)(a) (duplicating the text 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 Iowa Administrative Code rule 87124.32(4).

An employee who engages in a physical altercation in the workplace, regardless of whether the employee struck the first blow, engages in misconduct where the employee’s actions are not in self-defense or the employee failed to retreat from the physical altercation. See *Savage v. Employment Appeal Board*, 529 N.W.2d 640 (Iowa App. 1995).

The evidence in the record establishes a March 11, 2024 discharge for misconduct in connection with the employment. On March 9, 2024, Ms. Dunson intentionally and repeatedly violated the employer’s reasonable and uniformly enforced policy prohibiting violence in the workplace. Ms. Dunson repeatedly assaulted her coworker, Mr. McCoy, in the workplace. Ms. Dunson’s violent behavior substantially and unjustifiably endangered the personal safety of coworkers, including Mr. McCoy. None of Ms. Dunson’s violent behavior was self-defensive in nature. Ms. Dunson’s conduct indicated a willful and wanton disregard for the employer’s interest in maintaining a safe, civil workplace free of violence. Ms. Dunson is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. Ms. Dunson must meet all other eligibility requirements. The employer’s account shall not be charged for benefits.

**DECISION:**

The March 29, 2024 (reference 01) decision is AFFIRMED. The claimant was discharged on March 11, 2024 for misconduct in connection with the employment. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant’s weekly benefit amount. The claimant must meet all other eligibility requirements. The employer’s account shall not be charged for benefits.



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James E. Timberland  
Administrative Law Judge

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April 19, 2024  
Decision Dated and Mailed

JET/jkb

**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  
6200 Park Ave Suite 100  
Des Moines, Iowa 50321  
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  
6200 Park Ave Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
Online: 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.