

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

HAILEY CAVIN
Claimant

LUTHERAN SERVICES IN IOWA INC
Employer

APPEAL NO. 19A-UI-07424-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/18/19
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 10, 2019, reference 01, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on August 2, 2019 for no disqualifying reason. After due notice was issued, a hearing was held on October 10, 2019. The claimant did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. Amber Barrett represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant, which record reflects that no benefits have been disbursed to the claimant. Exhibits 1 through 5 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.

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Hailey Cavin was employed by Lutheran Services in Iowa, Inc. as a Youth Associate from February 2019 until August 2, 2019, when the employer discharged her from the employment for failure to report an allegation of child abuse. Ms. Cavin worked at a residential facility for youths with delinquency issues, mental health issues, and challenging behavior. Ms. Cavin was a certified child abuse mandatory reporter from February 15, 2019 onward. The employer's work rules and Iowa law applicable to mandatory reporters required that Ms. Cavin report suspected abuse when she reasonably believed a child had suffered abuse. On July 5, 2019, Ms. Cavin heard two male juvenile clients speaking about a staff member and a juvenile client allegedly recently engaging in sexual intercourse. Ms. Cavin concluded the conversation was a joke and did not report the conversation to the employer as an allegation of child abuse. Ms. Cavin discussed the conversation with another Youth Associate, who reported the matter to the employer on July 30, 2019. The employer interviewed Ms. Cavin about the matter and Ms. Cavin explained

that she had thought the youths were joking. The employer further investigated the underlying matter and concluded that a sex act had in fact taken place between the staff member and the youth in question.

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 a discharge for no disqualifying reason. The evidence in the record establishes that the claimant made a good faith error in judgment when she concluded the youths had merely been joking on July 5, 2019. Neither the employer's work rules nor the law required that Ms. Cavin report every single reference to possible child abuse. Instead the requirement was that Ms. Cavin report only those instances where she reasonably believed child abuse to have occurred. Based on the context and the utterance, Ms. Cavin believed there was no bona fide abuse issue. The mere fact that Ms. Cavin was wrong in her conclusion does not establish a willful disregard for the employer's interests. Ms. Cavin is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The September 10, 2019, reference 01, decision is affirmed. The claimant was discharged on August 2, 2019 for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn