

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BAILEY L JOHNSON
Claimant

APPEAL NO. 15A-UI-00733-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PPRC LLC
Employer

OC: 12/21/14
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 January 8, 2015, reference 01, decision that allowed benefits to the claimant, provided she was otherwise eligible, and held that benefits could be assessed to the employer's account; based on an Agency conclusion that the claimant had been discharged for no disqualifying reason. After due notice was issued, a hearing was held on February 10, 2015. Claimant participated. Brittany Schuett represented the employer and presented additional testimony through Rhonda Allen. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits One, Two, and Five 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 "universal worker" in the employer's memory care unit until December 24, 2014 when the employer discharged her from the employment for failing to respond to an alarm system meant to alert staff that a resident had left the memory care unit. The claimant was one of two universal workers working in the memory care unit on December 24 at the time of the resident's elopement. The claimant had been inside a resident's apartment assisting a resident in the restroom at the time of the elopement. Neither the claimant nor her coworker heard the door alarm sound or heard an alarm through the pagers they wore. The resident left the memory care unit and entered the assisted care unit. Another staff member returned the resident to the memory care unit.

The final incident followed another resident elopement on November 16. In that instance, the claimant had complied with the request of the universal worker assigned to the assisted living unit that the claimant accompany a resident with Parkinson's Disease outside so the resident could smoke. The employer's policy required that two universal workers remain in the memory care unit at all times, but the employer did not adhere to that policy in practice.

The claimant assumed the universal working from the assisted living unit would go to the memory care unit while the claimant was outside with the other resident. While the claimant was outside, a resident exited the memory care unit and exited the facility. The resident was located outside by other memory care universal worker after the claimant returned to memory care unit and as the other universal care worker was leaving the facility on break. No one on staff at the time had heard the door alarm sound or had received an alarm through their pagers.

The employer has an in-house maintenance person periodically test the door alarms on the memory care unit. The employer also employs an outside company to maintain the door alarms. Despite that, the doors in question do not always reset when a person uses them and, under those circumstances, may not trigger an alarm the next time someone goes through them.

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).

The employer has presented insufficient evidence to establish that the alarm sounded on December 24, 2014 or that the claimant failed to respond to the alarm. The claimant testified that she did not hear the alarm. The employer testified that the other employee indicated she also did not hear it. The evidence fails to establish a current act of misconduct. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that the claimant was discharged for no disqualifying reason. Accordingly, the claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The January 8, 2015, reference 01, decision is affirmed. The claimant was discharged 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

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